

The **NORTH CAROLINA REGISTER**

IN THIS ISSUE

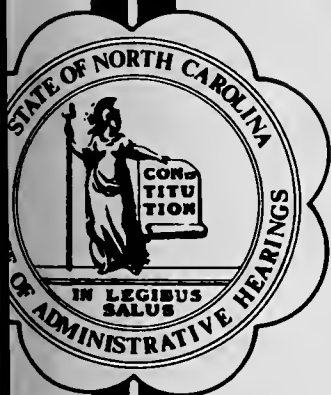
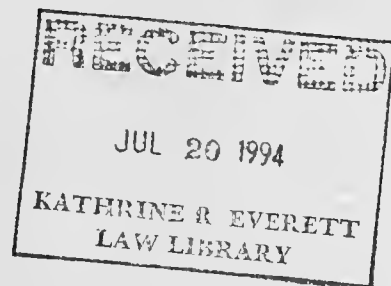
EXECUTIVE ORDER

IN ADDITION

Voting Rights Act

PROPOSED RULES

**Barber Examiners
Human Resources
Insurance
Justice
Medical Examiners
Physical Therapy Examiners
Public Education
Transportation**



RRC OBJECTIONS

CONTESTED CASE DECISIONS

ISSUE DATE: July 15, 1994

Volume 9 • Issue 8 • Pages 504 - 587

INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

NORTH CAROLINA REGISTER

The *North Carolina Register* is published twice a month and contains information relating to agency, executive, legislative and judicial actions required by or affecting Chapter 150B of the General Statutes. All proposed administrative rules and notices of public hearings filed under G.S. 150B-21.2 must be published in the Register. The Register will typically comprise approximately fifty pages per issue of legal text.

State law requires that a copy of each issue be provided free of charge to each county in the state and to various state officials and institutions.

The *North Carolina Register* is available by yearly subscription at a cost of one hundred and five dollars (\$105.00) for 24 issues. Individual issues may be purchased for eight dollars (\$8.00).

Requests for subscription to the North Carolina Register should be directed to the Office of Administrative Hearings, P. O. Drawer 27447, Raleigh, N. C. 27611-7447.

ADOPTION, AMENDMENT, AND REPEAL OF RULES

The following is a generalized statement of the procedures to be followed for an agency to adopt, amend, or repeal a rule. For the specific statutory authority, please consult Article 2A of Chapter 150B of the General Statutes.

Any agency intending to adopt, amend, or repeal a rule must first publish notice of the proposed action in the *North Carolina Register*. The notice must include the time and place of the public hearing (or instructions on how a member of the public may request a hearing); a statement of procedure for public comments; the text of the proposed rule or the statement of subject matter; the reason for the proposed action; a reference to the statutory authority for the action and the proposed effective date.

Unless a specific statute provides otherwise, at least 15 days must elapse following publication of the notice in the *North Carolina Register* before the agency may conduct the public hearing and at least 30 days must elapse before the agency can take action on the proposed rule. An agency may not adopt a rule that differs substantially from the proposed form published as part of the public notice, until the adopted version has been published in the *North Carolina Register* for an additional 30 day comment period.

When final action is taken, the promulgating agency must file the rule with the Rules Review Commission (RRC). After approval by RRC, the adopted rule is filed with the Office of Administrative Hearings (OAH).

A rule or amended rule generally becomes effective 5 business days after the rule is filed with the Office of Administrative Hearings for publication in the North Carolina Administrative Code (NCAC).

Proposed action on rules may be withdrawn by the promulgating agency at any time before final action is taken by the agency or before filing with OAH for publication in the NCAC.

TEMPORARY RULES

Under certain emergency conditions, agencies may issue temporary rules. Within 24 hours of submission to OAH, the Codifier Rules must review the agency's written statement of findings of need for the temporary rule pursuant to the provisions in G.S. 150B-21.1. If the Codifier determines that the findings meet the criteria in G.S. 150B-21.1, the rule is entered into the NCAC. If the Codifier determines that the findings do not meet the criteria, the rule is returned to the agency. The agency may supplement its findings and resubmit the temporary rule for an additional review or the agency may resubmit that it will remain with its initial position. The Codifier, thereafter, will enter the rule into the NCAC. A temporary rule becomes effective either when the Codifier of Rules enters the rule in the Code or on the sixth business day after the agency resubmits the rule without change. The temporary rule is in effect for the period specified in the rule or 180 days, whichever is less. An agency adopting a temporary rule must begin rule-making procedures on the permanent rule at the same time the temporary rule is filed with the Codifier.

NORTH CAROLINA ADMINISTRATIVE CODE

The North Carolina Administrative Code (NCAC) is a compilation and index of the administrative rules of 25 state agencies and occupational licensing boards. The NCAC comprises approximately 15,000 letter size, single spaced pages of material of which approximately 35% is changed annually. Compilation and publication of the NCAC is mandated by G.S. 150B-21.18.

The Code is divided into Titles and Chapters. Each state agency is assigned a separate title which is further broken down by chapters. Title 21 is designated for occupational licensing boards.

The NCAC is available in two formats.

- (1) Single pages may be obtained at a minimum cost of one dollar and 50 cents (\$2.50) for 10 pages or less, plus fifty cents (\$0.15) per each additional page.
- (2) The full publication consists of 53 volumes, totaling in excess of 15,000 pages. It is supplemented monthly with replacement pages. A one year subscription to the full publication including supplements can be purchased for seven hundred and fifty dollars (\$750.00). Individual volumes may also be purchased with supplement service. Renewal subscriptions for supplements to the initial publication are available.

Requests for pages of rules or volumes of the NCAC should be directed to the Office of Administrative Hearings.

CITATION TO THE NORTH CAROLINA REGISTER

The *North Carolina Register* is cited by volume, issue, page number and date. 1:1 NCR 101-201, April 1, 1986 refers to Volume 1, Issue 1, pages 101 through 201 of the *North Carolina Register* issued on April 1, 1986.

FOR INFORMATION CONTACT: Office of Administrative Hearings, ATTN: Rules Division, P.O. Drawer 27447, Raleigh, North Carolina 27611-7447, (919) 733-2678.

NORTH CAROLINA REGISTER



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NORTH CAROLINA REGISTER

Publication Schedule

(April 1994 - January 1995)

Volume and Issue Number	Issue Date	Last Day for Filing	Last Day for Elec- tronic Filing	Earliest Date for Public Hearing <i>15 days from notice</i>	* End of Required Comment Period <i>30 days from notice</i>	Last Day to Submit to RRC	** Earliest Effective Date
9:1	04/04/94	03/11/94	03/18/94	04/19/94	05/04/94	05/20/94	07/01/94
9:2	04/15/94	03/24/94	03/31/94	05/02/94	05/16/94	05/20/94	07/01/94
9:3	05/02/94	04/11/94	04/18/94	05/17/94	06/01/94	06/20/94	08/01/94
9:4	05/16/94	04/25/94	05/02/94	05/31/94	06/15/94	06/20/94	08/01/94
9:5	06/01/94	05/10/94	05/17/94	06/16/94	07/01/94	07/20/94	09/01/94
9:6	06/15/94	05/24/94	06/01/94	06/30/94	07/15/94	07/20/94	09/01/94
9:7	07/01/94	06/10/94	06/17/94	07/18/94	08/01/94	08/22/94	10/01/94
9:8	07/15/94	06/23/94	06/30/94	08/01/94	08/15/94	08/22/94	10/01/94
9:9	08/01/94	07/11/94	07/18/94	08/16/94	08/31/94	09/20/94	11/01/94
9:10	08/15/94	07/25/94	08/01/94	08/30/94	09/14/94	09/20/94	11/01/94
9:11	09/01/94	08/11/94	08/18/94	09/16/94	10/03/94	10/20/94	12/01/94
9:12	09/15/94	08/24/94	08/31/94	09/30/94	10/17/94	10/20/94	12/01/94
9:13	10/03/94	09/12/94	09/19/94	10/18/94	11/02/94	11/21/94	01/01/95
9:14	10/14/94	09/23/94	09/30/94	10/31/94	11/14/94	11/21/94	01/01/95
9:15	11/01/94	10/11/94	10/18/94	11/16/94	12/01/94	12/20/94	02/01/95
9:16	11/15/94	10/24/94	10/31/94	11/30/94	12/15/94	12/20/94	02/01/95
9:17	12/01/94	11/07/94	11/15/94	12/16/94	01/03/95	01/20/95	03/01/95
9:18	12/15/94	11/22/94	12/01/94	12/30/94	01/17/95	01/20/95	03/01/95
9:19	01/03/95	12/08/94	12/15/94	01/18/95	02/02/95	02/20/95	04/01/95
9:20	01/17/95	12/21/94	12/30/94	02/01/95	02/16/95	02/20/95	04/01/95

This table is published as a public service, and the computation of time periods are not to be deemed binding or controlling. Time is computed according to 26 NCAC 2B .0103 and the Rules of Civil Procedure, Rule 6.

** An agency must accept comments for at least 30 days after the proposed text is published or until the date of any public hearing, whichever is longer. See G.S. 150B-21.2(f) for adoption procedures.*

*** The "Earliest Effective Date" is computed assuming that the agency follows the publication schedule above, that the Rules Review Commission approves the rule at the next calendar month meeting after submission, and that RRC delivers the rule to the Codifier of Rules five (5) business days before the 1st business day of the next calendar month.*

**EXECUTIVE ORDER NO. 53
NORTH CAROLINA INTERAGENCY
COUNCIL FOR COORDINATING
HOMELESS PROGRAMS**

WHEREAS, the problem of homelessness denies a segment of our population their basic human need for adequate shelter; and

WHEREAS, several State agencies offer programs and services for homeless persons; and

WHEREAS, to combat the problem of homelessness most effectively, it is critical that these agencies coordinate program development and delivery of essential services.

NOW, THEREFORE, by the power vested in me as Governor by the laws and Constitution of the State of North Carolina, IT IS ORDERED:

Section 1. Establishment.

The North Carolina Interagency Council for Coordinating Homeless Programs (the "Interagency Council") is hereby established.

Section 2. Membership.

The Interagency Council shall consist of the Deputy Secretary of the North Carolina Department of Human Resources and twenty-three additional members who shall be appointed by the Governor from the following public and private agencies and categories of qualifications:

- (a) One member from the Department of Administration.
- (b) One member from the Housing Finance Agency.
- (c) One member of the Office of State Planning.
- (d) One member of the Department of Community Colleges.
- (e) One member of the Department of Crime Control and Public Safety.
- (f) One member of the Department of Cultural Resources.
- (g) One member of the Department of Commerce.
- (h) One member of the Department of Environment, Health, and Natural Resources.
- (i) One member of the Department of Human Resources.
- (j) One member of the State Board of Education or a member from the Department of Public Instruction.

- (k) One member of the Department of Insurance.
- (l) One member of the Department of Transportation.
- (m) One local government official.
- (n) Two members from a non-profit agency concerned with housing issues and the homeless.
- (o) Two members from a non-profit agency concerned with the provision of supportive services to the homeless.
- (p) Two homeless or formerly homeless persons.
- (q) Two members from the private sector.
- (r) One member of the North Carolina Senate.
- (s) One member of the North Carolina House of Representatives.

Section 3. Chair and Terms of Membership.

The Deputy Secretary of the Department of Human Resources shall serve as Chair of the Interagency Council during his or her term of employment in that position. Initial terms of membership for the other members of the Interagency Council shall be staggered with eleven members serving two years and eleven members serving three years. Each appointment thereafter shall be for a term of two years.

Section 4. Meetings.

The Interagency Council shall meet quarterly and at other times at the call of the Chair or upon written request of at least (5) five of its members.

Section 5. Functions.

(a) The Interagency Council shall advise the Governor and Secretary of the Department of Human Resources on issues related to the problems of persons who are homeless or at risk of becoming homeless, identify available resources throughout the State and provide recommendations for joint and cooperative efforts in carrying out programs to meet the needs of the homeless.

(b) The Interagency Council shall set short term and long term goals and determine yearly priorities.

(c) The Interagency Council shall submit an annual report to the Governor, by November 1, on its accomplishments.

Section 6. Travel and Subsistence Expenses.

Members of the Interagency Council shall receive necessary travel and subsistence expenses from the Department of Human Resources in

accordance with the provisions of G.S. 120-3.1 or 138-5.

Section 7. Staff Assistance.

The Office of Economic Opportunity of the Department of Human Resources shall provide administrative and staff support services required by the Interagency Council.

This Executive Order shall be effective immediately.

Done in the Capital City of Raleigh, North Carolina, this the 20th day of June, 1994.

This Section contains public notices that are required to be published in the Register or have been approved by the Codifier of Rules for publication.

U.S. Department of Justice

Civil Rights Division

Voting Section

P.O. Box 66128

Washington, D.C. 20035-6128

DLP:MAP:RJD:lss:emr

DJ 166-012-3

94-1762

June 16, 1994

DeWitt F. McCarley, Esq.

City Attorney

P. O. Box 7207

Greenville, North Carolina 27835-7207

Dear Mr. McCarley:

This refers to twelve annexations [Ordinance Nos. 2744 (1993), and 7-10, 24-26 and 37-40 1994]] and the designation of the annexed areas to single-member districts for the City of Greenville in Pitt County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on April 18, 1994.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

By:

Steven H. Rosenbaum
Chief, Voting Section

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035-6128

June 23, 1994

Michael Crowell, Esq.
Tharrington, Smith & Hargrove
P. O. Box 1151
Raleigh, North Carolina 27602-1151

Dear Mr. Crowell:

This refers to the change in the method of electing city councilmembers from at large to two double-member districts and one at large, the districting plan and an implementation schedule for the City of Laurinburg in Scotland County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on May 17, 1994.

This also refers to your request that the Attorney General reconsider and withdraw the April 25, 1994, objection under Section 5 to the city's adoption of an annexation (Ordinance No. 0-1994-01). We received your request on May 17, 1994.

As noted in our objection letter, the annexation would reduce significantly the black proportion of the city's total population. Our analysis showed that, in the context of racially polarized voting, the existing at-large method of election for the city council would not fairly reflect black voting strength in the expanded city, and accordingly, an objection was interposed. See City of Richmond v. United States, 422 U.S. 358 (1975).

Under the proposed election system, city councilmembers would be elected from two double-member districts, one of which has a black population of 62.9 percent. Our analysis shows that this system would fairly recognize black voting strength in the expanded city and therefore resolves our Section 5 concerns.

Accordingly, I hereby withdraw the objection to the annexation identified by Ordinance No. 0-1994-01 and interpose no objection to the change in method of election, districting plan and implementation schedule. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. In addition, as authorized by Section 5, we reserve the right to reexamine this submission if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41 and 51.43).

Since the Section 5 status of the proposed annexation is at issue in Speller v. City of Laurinburg, No. 3:93 CV 365, we are providing a copy of this letter to the court and counsel of record in that case.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

cc: Honorable William L. Osteen, Jr.
United States District Judge

Counsel of Record

U.S. Department of Justice

Civil Rights Division

Voting Section

P.O. Box 66128

Washington, D.C. 20035-6128

DLP:MAP:RJD:emr

DJ 166-012-3

94-1079

94-1984

June 27, 1994

David A. Holec, Esq.

City Attorney

P. O. Box 1388

Lumberton, North Carolina 28359

Dear Mr. Holec:

This refers to the February 28, 1994, annexation (Hammonds Property), the April 25, 1994, annexation (Meadow Road Corridor) and the designation of the annexed areas to a single-member district for the City of Lumberton in Robeson County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission of the Hammonds Property annexation on March 7, 1994, and your related submission of the Meadow Road Corridor annexation on April 29, 1994.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

By:

Steven H. Rosenbaum
Chief, Voting Section

TITLE 10 - DEPARTMENT OF HUMAN RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Division of Facility Services intends to amend rule cited as 10 NCAC 3R .3030.

The proposed effective date of this action is October 1, 1994.

The public hearing will be conducted at 10:00 a.m. on August 4, 1994 at the Council Building, 701 Barbour Drive, Room 201, Raleigh, N. C. 27603.

Reason for Proposed Action: To adopt as a permanent rule the temporary rule adopted July 1, 1994, which amend the Certificate of Need facility and service need determinations set forth in the 1994 State Medical Facilities Plan.

Comment Procedures: All written comments must be submitted to Jackie Sheppard, APA Coordinator, Division of Facility Services, P.O. Box 29530, Raleigh, N.C. 27626-0530 no later than August 16, 1994. Oral comments may be made at the hearing.

Editor's Note: This Rule was filed as a temporary amendment effective July 1, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner.

CHAPTER 3 - FACILITY SERVICES

SUBCHAPTER 3R - CERTIFICATE OF NEED REGULATIONS

SECTION .3000 - STATE MEDICAL FACILITIES PLAN

.3030 FACILITY AND SERVICE NEED DETERMINATIONS

Facility and service need determinations are shown in Items (1) - (16) of this Rule. The need determinations shall be revised continuously throughout 1994 pursuant to 10 NCAC 3R .3040.

- (1) Category A. Acute Health Service Facilities. It is determined that there is no need for additional acute care beds and no reviews are scheduled.
- (2) Category B. Long-Term Nursing Facility Beds.

County	HSA	Number of Nursing Beds Needed
Brunswick	V	40
Pender	V	20
Greene	VI	10
Lincoln	III	30

- (3) Category C.
 - (a) Psychiatric Facility Beds. It is determined that there is no need for additional psychiatric beds and no reviews are scheduled.
 - (b) Intermediate Care Facilities for Mentally Retarded Beds.

Counties	HSA	Need Determination	
		<u>Child</u>	<u>Adult</u>
Buncombe, Madison, Mitchell, Yancey	I	0	6
Gaston, Lincoln	III	0	6
Rowan, Iredell, Davie	III	12	0
Orange, Person, Chatham	IV	6	0
Halifax	VI	12	0
Pitt	VI	12	0
Beaufort, Washington, Tyrrell, Hyde, Martin	VI	6	6
Pasquotank, Chowan, Perquimans, Camden, Dare, Currituck	VI	0	18

- (c) Chemical Dependency Treatment Beds. It is determined that there is no need for additional chemical dependency treatment beds and no reviews are scheduled.
- (4) Category D. End-Stage Renal Disease Treatment Facilities. Need for end-stage renal dialysis facilities or stations is determined as is provided in 10 NCAC 3R .3032.
- (5) Category E. Inpatient Rehabilitation Facility Beds. It is determined that there is no need for additional rehabilitation beds and no reviews are scheduled.
- (6) Category F. Ambulatory Surgery Operating Rooms. It is determined that there is no need for additional ambulatory surgery operating rooms and no reviews are scheduled, except that a Rural Primary Care Hospital designated by the N.C. Office of Rural Health Services pursuant to Section 1820(f) of the Social Security Act may apply for a certificate of need to convert existing operating rooms for use as a freestanding ambulatory surgical facility.
- (7) Category H. New Home Health Agencies or Offices.

County	HSA	Number of Agencies or Offices Needed
Iredell	III	1
Mecklenburg	III	2
Durham	IV	1
Cumberland	V	1

- (8) Category J. Open heart surgery services. It is determined that there is no need for additional open heart surgery services and no reviews are scheduled; except that a health service facility that currently provides these services may apply for a certificate of need to expand its existing services to meet specific needs if utilization of the health service facility's existing open heart surgery services exceeds 80% of capacity.
- (9) Category J. Heart-Lung Bypass Machines. It is determined that there is no need for additional heart-lung bypass machines and no reviews are scheduled; except that a health service facility that currently provides open heart surgery services may apply for a certificate of need to acquire additional heart-lung bypass machinery if the existing heart-lung machinery used by the health service facility is utilized at or above 80% of capacity.
- (10) Category J. Cardiac Angioplasty Equipment. It is determined that there is no need for additional cardiac angioplasty equipment and no reviews are scheduled; except that a health service facility that

currently provides cardiac angioplasty services may apply for a certificate of need to acquire additional cardiac angioplasty equipment if utilization of cardiac angioplasty equipment used by the health service facility exceeds 80% of capacity.

- (11) Category J. Cardiac Catheterization Equipment. It is determined that there is no need for additional fixed or mobile cardiac catheterization equipment and no reviews are scheduled; except that a health service facility that currently provides cardiac catheterization services may apply for a certificate of need to acquire additional cardiac catheterization equipment if utilization of cardiac catheterization equipment used by the health service facility exceeds 80% of capacity.
- (12) Category J. Solid organ transplant services shall be developed and offered only by academic medical center teaching hospitals as designated in 10 NCAC 3R .3050(a)(3). It is determined that there is no need for new solid organ transplant services and no reviews are scheduled.
- (13) Category J. Bone Marrow Transplantation Services. It is determined that allogeneic bone marrow transplantation services shall be developed and offered only by academic medical center teaching hospitals as designated in 10 NCAC 3R .3050(a)(3). It is determined that there is no need for additional allogeneic or autologous bone marrow transplantation services and no reviews are scheduled.
- (14) Category J. Gamma Knife Equipment. It is determined that there is no need for gamma knife equipment and no reviews are scheduled.
- (15) Category J. Positron Emission Tomography Scanner. It is determined that there is no need for additional positron emission tomography scanners for purposes other than research and no reviews are scheduled.
- (16) Category L.

(a) New Hospice Home Care Programs.

County	HSA	Number of New Hospice Home Care Programs Needed
Graham	I	4
McDowell	I	4
Swain	I	4
Cumberland	V	1
Robeson	V	1
Edgecombe	VI	4
Hyde	VI	1
Onslow	VI	1
Wayne	VI	1

(b) New Hospice Inpatient Beds (Single Counties). It is determined that the following single counties have a need for six or more new Hospice Inpatient Beds:

County	HSA	Number of New Hospice Inpatient Beds Needed
Forsyth	II	8
Wake	IV	7

- (c) **New Hospice Inpatient Beds (Contiguous Counties).** It has been determined that any combination of two or more contiguous counties taken from the following list shall have a need for new hospice inpatient beds if the combined bed deficit for the grouping of contiguous counties totals six or more beds. Each county in a grouping of contiguous counties must have a deficit of at least one and no more than five beds. The need for the grouping of contiguous counties shall be the sum of the deficits in the individual counties. For purposes of this rule, "contiguous counties" shall mean a grouping of North Carolina counties which includes the county in which the new hospice inpatient facility is proposed to be located and any one or more of the immediately surrounding North Carolina counties which have a common border with that county, even if the borders only touch at one point. No county may be included in a grouping of contiguous counties unless it is listed in the following table:

County	HSA	Hospice Inpatient Bed Deficit
Alexander	I	1
Ashe	I	1
Avery	I	1
Burke	I	1
Madison	I	1
Polk	I	1
Rutherford	I	2
Transylvania	I	1
Watauga	I	1
Wilkes	I	1
Yancey	I	1
Alamance	II	5
Caswell	II	1
Davidson	II	2
Guilford	II	1
Rockingham	II	3
Stokes	II	1
Surry	II	2
Cabarrus	III	2
Gaston	III	4
Iredell	III	3
Mecklenburg	III	4
Rowan	III	3
Stanly	III	1
Union	III	2

County	HSA	Hospice Inpatient Bed Deficit
Chatham	IV	2
Durham	IV	3
Johnston	IV	1
Lee	IV	1
Bladen	V	1
Brunswick	V	2
Columbus	V	2
Harnett	V	1
Moore	V	2
Pender	V	1
Richmond	V	1
Scotland	V	1
Bertie	VI	2
Duplin	VI	1
Greene	VI	2
Hertford	VI	2
Nash	VI	1
Northampton	VI	1
Onslow	VI	1
Pitt	VI	1
Wilson	VI	1

Statutory Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).

**TITLE 10 - DEPARTMENT
OF HUMAN RESOURCES**

*Division of Medical Assistance, 1985 Umstead
Drive, Raleigh, NC 27603.*

Notice is hereby given in accordance with G.S. 150B-21.2 that the DHR/Division of Medical Assistance intends to adopt rules cited as 10 NCAC 26H .0210 - .0222 and repeal 26H .0201 - .0209.

The proposed effective date of this action is October 1, 1994.

The public hearing will be conducted at 1:30 p.m. on August 1, 1994 at the North Carolina

Reason for Proposed Action: These rules will repeal the existing Hospital Inpatient Reimbursement Plan and establish the Diagnosis Related Groups Hospital Inpatient Plan.

Comment Procedures: Written comments concerning these rules must be submitted by August 15, 1994, to: The Division of Medical Assistance, 1985 Umstead Drive, Raleigh, NC 27603 ATTN: Clarence Ervin, APA Coordinator. Oral comments may be presented at the hearing. In addition, a fiscal impact statement is available upon request

from the same address.

CHAPTER 26 - MEDICAL ASSISTANCE

SUBCHAPTER 26H - REIMBURSEMENT PLANS

SECTION .0200 - HOSPITAL INPATIENT REIMBURSEMENT PLAN

.0201 REIMBURSEMENT PRINCIPLES

Effective July 1, 1982 and each July 1 thereafter, all hospitals participating in the North Carolina Medical Assistance Program will be reimbursed for inpatient services based on all inclusive prospective per diem rates.

Authority G.S. 108A-25(b); 108A-54; 108A-55; S.L. 1985, c. 479, s. 86; 42 C.F.R. 447, Subpart C.

.0202 RATE SETTING METHODS

(a) An annual rate is determined for each hospital to be effective for dates of service beginning each July 1. Rates are derived from cost reports for a base year period or from previous appeal decisions. The initial base year is the cost reporting period ending in 1981. Services provided prior to July 1, 1986 are reimbursed at rates not to exceed the rates effective July 1, 1985.

(b) The prospective rate is the sum of the operating rate component and the capital rate component. The capital rate component is the higher of the base year capital per diem cost or the most recent capital rate as adjusted upon previous appeal. The base year capital cost per diem is computed by dividing total capital costs allocated to inpatient services by total inpatient days. The operating rate component is determined by inflating the Medicaid base year operating cost per diem to the rate year. The base year operating cost per diem is computed by subtracting the capital cost per diem from the total base year Medicaid cost per diem. Base year Medicaid costs include inpatient routine, special care, and ancillary services, malpractice insurance, interns' and residents' services, and other covered inpatient services.

(c) Inflation factors for the operating rate components are based on the National Hospital Market Basket Index and the most recent actual and projected cost data available from the North Carolina Office of State Budget and Management.

(d) The prospective rate for a new hospital is set at the lower of:

- (1) The all hospital mean rate; or
- (2) Seventy five percent of the hospital's projected average gross inpatient revenue per day during the first year of operations.

This provision applies to a hospital if a cost report covering at least 12 months of normal operations has not been filed. This rate is the base year rate until a desk reviewed cost report covering at least 12 months of normal operations is available.

(e) Out of state hospital services are reimbursed according to the rates established by the Medicaid Agency of the State in which the hospital is located. If a usable rate cannot be obtained, services are reimbursed at 75 percent of billed charges or a negotiated rate not to exceed reasonable cost.

(f) The initial base year for psychiatric hospitals is the cost reporting period ending in 1989, or 1990 if a full year cost report is available as of April 1, 1991. The total base year per diem cost for a hospital is limited to the median per diem cost in the base year of all psychiatric hospitals. The limit does not apply to or reduce any amortization of start up costs of an individual hospital. State operated hospitals are not included in the calculation of the median per diem cost.

(g) To assure compliance with the separate upper payment limit for State operated facilities, the hospitals operated by the Department of Human Resources and all the primary affiliated teaching hospitals for the University of North Carolina Medical Schools, will be reimbursed their reasonable costs in accordance with the provisions of the Medicare Provider Reimbursement Manual.

(h) This plan intends to encourage the use of lower cost hospitals for routine illnesses. Hospitals with rates at or below the all hospital mean will be reimbursed at the full prospective rate without day limits. Hospitals with rates higher than the mean rate of all hospitals will be reimbursed at the full prospective rate up to an annual days limit. Days in excess of the limit will be reimbursed at the mean rate of hospitals below the all hospital mean. This reimbursement limitation will be eliminated for claims paid in April, 1991 and thereafter if and when:

- (1) the Health Care Financing Administration, U.S. Department of Health and Human Services, approves amendments submitted to HCFA by the Director of the Division of Medical Assistance on or about March 14, 1991 as #MA 91-10 and #MA 91-11, wherein the Director proposes

~~amendment of the State Plan to eliminate the "Annual Days Limit" to the Plan, and~~

- (2) ~~the Director of the Division of Medical Assistance determines that sufficient funds are available pursuant to Rule .0206(b)(3) of this Section or otherwise for this purpose.~~

Authority G.S. 108A-25(b); 108A-54; 108A-55; S.L. 1985, c. 479, s. 86; 42 C.F.R. 447, Subpart C.

.0203 COST REPORTING AND AUDITING

(a) ~~On or before December 1, 1981 each hospital is required to send to the Division of Medical Assistance one copy of its fiscal year 1982 budget and any supplementary materials as submitted to Blue Cross and Blue Shield of North Carolina.~~

(b) ~~An annual cost report must be filed with the Medicare Intermediary, Blue Cross and Blue Shield of North Carolina, in accordance with all standards, principles, and time schedules required by the Common Medicare/Medicaid Audit.~~

Authority G.S. 108A-25(b); 108A-54; 108A-55; S.L. 1985, c. 479, s. 86; 42 C.F.R. 447, Subpart C.

.0204 ADMINISTRATIVE RECONSIDERATION REVIEWS

(a) ~~Reconsideration reviews of rate determinations will be processed in accordance with the provisions of 10 NCAC 26K. Requests for reconsideration reviews must be submitted to the Division of Medical Assistance within 60 days after rate notification, unless unexpected conditions causing intense financial hardship arise, in which case a reconsideration review may be considered at any time.~~

(b) ~~Operating rate reconsideration reviews are considered only on the basis of the actual additional cost of essential new services or patient mix changes incurred since the base year.~~

(c) ~~Capital rate reconsideration reviews are considered only for the additional cost of new construction, renovations and equipment, consistent with the Certificate of Need approval if required.~~

(d) ~~A hospital's adjusted rate for one or more of the factors cited in the Paragraphs (a) - (c) of this Rule cannot exceed a rate limit computed by applying the methods described in Rule .0202(b) and (c) of this Subchapter to the hospital's allow-~~

~~able Medicaid cost in the most recent annual cost report available.~~

(e) ~~Hospitals that serve a disproportionate share of low income patients are eligible to receive rate adjustments. The cost report data and financial information that is required in order to qualify as a disproportionate share hospital effective April 1, 1991 is based on the fiscal year ending in 1989 for each hospital, as submitted to the Division of Medical Assistance on or before April 1, 1991. The cost report data and financial information to qualify as a disproportionate share hospital effective July 1, 1991 is based on the fiscal year ending in 1990 for each hospital, as submitted to the Division of Medical Assistance on or before September 1, 1991. In subsequent years, qualifications effective July 1 of any particular year are based on each hospital's fiscal year ending in the preceding calendar year. The patient days, costs, revenues, or charges related to nursing facility services, swing bed services, home health services, outpatient services, or any other service that is not a hospital inpatient service, cannot be used to qualify for disproportionate share status. A hospital is deemed to be a disproportionate share hospital if the hospital has at least 2 obstetricians with staff privileges at the hospital who have agreed to provide obstetric services to individuals eligible for Medicaid. In the case of a hospital located in a rural area, the term obstetrician includes any physician with staff privileges at the hospital to perform non-emergency obstetric procedures. This requirement does not apply to a hospital which did not offer non-emergency obstetric services as of December 21, 1987 or to a hospital that predominantly serves individuals under 18 years of age; and~~

- (1) ~~the hospital's Medicaid inpatient utilization rate, defined as the percentage resulting from dividing Medicaid patient days by total patient days, is at least one standard deviation above the mean Medicaid inpatient utilization rate for all hospitals that receive Medicaid payments in the state; or~~
- (2) ~~the hospital's low income utilization rate exceeds 25 percent. The low income utilization rate is the sum of:~~
 - (A) ~~the ratio of the sum of Medicaid inpatient revenues plus cash subsidies received from the State and local governments, divided by the hospital's total patient revenues; and~~
 - (B) ~~the ratio of the hospital's gross inpatient charges for charity care less the~~

~~cash subsidies for inpatient care received from the State and local governments, divided by the hospital's total inpatient charges; or~~

~~(3) the sum of the hospital's Medicaid revenues, bad debts allowance net of recoveries, and charity care exceeds 20 percent of gross patient revenues; or~~

~~(4) The hospital, in a ranking of hospitals in the State, from most to least in number of Medicaid patient days provided, is among the top group that accounts for 50% of the total Medicaid patient days provided by all hospitals in the State; or~~

~~(5) Psychiatric Hospitals operated by the North Carolina Department of Human Resources, Division of Mental Health, Developmental Disabilities, Substance Abuse Services (DMH/DD/SAS).~~

~~(f) The rate adjustment for a disproportionate share hospital is 2.5 percent plus one fourth of one percent for each percentage point that a hospital's Medicaid inpatient utilization rate exceeds one standard deviation of the mean Medicaid inpatient utilization rate in the State. The rate adjustment is applied to a hospital's payment rate exclusive of any previous disproportionate share adjustments.~~

~~(g) For hospitals eligible under Paragraph (e) of this Rule, an additional payment adjustment may be made to each hospital for services provided in the months of April, May, and June, 1991 equal to the product of the ratio of each hospital's total Medicaid inpatient days divided by the total Medicaid inpatient days provided by all disproportionate share hospitals in the state during their fiscal years ending in 1989 multiplied by an amount of funds to be determined by the Director of the Division of Medical Assistance, but not to exceed one hundred forty million dollars (\$140,000,000). Each hospital's payment adjustment will be paid retrospectively in up to three installments. An additional payment adjustment by this methodology may be made for services provided in the months of July, August, September, October, November and December, 1991 based on the Medicaid and total inpatient days as filed in the hospital cost reports for fiscal years ending in 1990. The amount of funds to be determined by the Director shall not exceed one hundred sixty million dollars (\$160,000,000).~~

~~(h) For hospitals eligible under Paragraph (e) of this rule, an additional payment adjustment may be made after the effective date of this rule to each hospital for services provided in the months of~~

~~January, February, March, April, May and June 1992 based on the Medicaid and total inpatient days as filed in hospital cost reports for fiscal years ending in 1990, by use of the methodology described Paragraph (g) of this Rule. The amount of funds to be determined by the Director shall not exceed \$160,000,000. Each hospital payment adjustment will be paid retrospectively in up to three installments. An additional payment adjustment by this methodology will be made for services provided in the months of July, August, and September 1992 based on the Medicaid and total inpatient days as filed in hospital cost reports for fiscal years ending in 1991. The amount of funds to be determined by the director shall not exceed \$80,000,000.~~

~~(i) Effective October 1, 1992, hospitals eligible under Subparagraph (e)(5) of this Rule will be eligible for disproportionate share payments, in addition to other payments made under the North Carolina Medicaid Hospital reimbursement methodology, from a disproportionate share pool under the circumstance specified in this Paragraph:~~

~~(1) A DMH/DD/SAS operated psychiatric hospital will receive a monthly disproportionate share payment based on the monthly bed days of service to low income persons of each DMH/DD/SAS hospital divided by the total monthly bed days of service to low income persons of all DMH/DD/SAS hospitals times allocated funds.~~

~~(2) This payment shall be in addition to the disproportionate share payments made in accordance with (f), (g), and (j) under Administrative Appeals of this plan. However, DHR operated psychiatric hospitals are not required to qualify under the requirement of Subparagraphs (e)(1) through (4) of this Rule.~~

~~(3) The amount of allocated funds shall be determined by the Director of the Division of Medical Assistance, but not to exceed the quarterly federal allotment of funds (plus appropriate non-federal match) earmarked for disproportionate share hospital payments less payments made under (e)(1) through (4) and (j) under administrative appeals divided by three. In the preceding formula, bed days of services to low income persons is defined as the number of bed days provided to individuals that have been determined by the hospital as patients that do not possess the financial re-~~

~~sources to pay portions or all charges associated with care provided. Low income persons include a person that has been determined eligible for Medical Assistance. The count of bed days used to determine payment is based upon the month immediately prior to the month that payments are made.~~

~~This reimbursement limitation will become effective on the date: The Health Care Financing Administration, U.S. Department of Health and Human Services, approves amendment submitted to HCFA by the Director of the Division of Medical Assistance on or about December 3, 1992 as #MA 92-34, where in the Director proposes amendment of the State Plan to establish Psychiatric Hospitals operated by the North Carolina Department of Human Resources, Division of Mental Health, Developmental Disabilities, Substance Abuse Services (DMH/DD/SAS) as Disproportionate Share Hospitals and method to determine payment.~~

~~(j) Except as otherwise specified in this Rule, rate adjustments are considered based on the most recent annual cost report, audited financial statements when necessary and other required information as submitted by a hospital provider. An adjustment cannot be made if the necessary information is not submitted or if the information is incomplete or incorrect. A rate adjustment can be applied retroactively to the most recent July 1 effective date, but cannot be applied to previous fiscal years.~~

~~(k) For hospitals eligible under Paragraph (e), a payment adjustment is available for services involving exceptionally high costs or exceptionally long lengths of stay for patients under six years of age. A payment adjustment is available for all the other hospitals for such services provided to patients under one year of age. A five percent increase above the normal payment amount (as described in Paragraph (f) of this Rule) will be provided for the inpatient claims with billed charges in excess of fifty five thousand dollars (\$55,000) or with stays in excess of 65 days. The fifty five thousand dollar (\$55,000) threshold will be increased annually by the inflation factor described under Paragraph (e) of this Rule. This provision is effective for dates of service beginning July 1, 1991.~~

~~(l) The disproportionate share payments and payment adjustments described in Paragraphs (f), (g), (h) and (j) are made in addition to the payments described in 10 NCAC 26H .0202 (a)-~~

~~(f):~~

Authority G.S. 108A-25(b); 108A-54; 108A-55; 150B-11; S.L. 1985, c. 479, s. 86; 42 C.F.R. 447, Subpart C.

.0205 PAYMENT FOR LOWER THAN ACUTE LEVEL OF CARE

~~(a) Days for authorized skilled nursing or intermediate care level of service rendered in an acute care hospital will be reimbursed at a rate equal to the average rate of all such Medicaid days based on rates in effect for the long term care plan year beginning each October 1.~~

~~(b) Days for lower than acute level of care for ventilator dependent patients in swing bed hospitals or that have been down graded through the utilization review process may be paid for up to 180 days at a lower level ventilator dependent rate if the hospital is unable to place the patient in a lower level facility. An extension may be granted if in the opinion of the Division of Medical Assistance the condition of the patient prevents acceptance by a nursing facility. A single all inclusive prospective per diem rate is paid, equal to the average rate paid to nursing facilities for ventilator dependent services. The hospital must actively seek placement of the patient in an appropriate facility.~~

Authority G.S. 108A-25(b); 108A-54; 108A-55; S.L. 1985, c. 479, s. 86; 42 C.F.R. 447, Subpart C.

.0206 PAYMENT ASSURANCE

~~(a) The state will pay each hospital the amount determined for inpatient services provided by the hospital according to the standards and methods set forth in this Section. In all circumstances involving third party payment, Medicaid will be the payor of last resort.~~

~~(b) If contributions are made pursuant to General Statute 143-23.2 during calendar year 1991, the Department has determined that it will use them as follows:~~

- ~~(1) the Department will present the contributed funds to the federal government to be matched pursuant to federal financial participation rules. The total of the contributed and matched funds hereinafter will be referred to as the "Funds" to be disbursed in the order set forth in this Rule.~~
- ~~(2) the contributed funds will provide the total non federal share of Medicaid~~

expenditures made with the Funds.

- (3) ~~up to forty million dollars (\$40,000,000) of the Funds will be used to fund elimination of the target day provision [as described in 10 NCAC 26H .0202(h)] for fiscal years 1990-91 and 1991-92, and to further other State Medicaid purposes for those fiscal years.~~
- (4) ~~any remaining Funds, not to exceed one hundred forty million dollars (\$140,000,000), will be used to make an additional payment adjustment to disproportionate share hospitals for services provided in April, May and June, 1991, as provided in Rule .0204(g) of this Section.~~
- (5) ~~any remaining Funds, not to exceed twenty two million five hundred thousand dollars (\$22,500,000), will be used to fund Medicaid provider claim payments in November or December 1991.~~
- (6) ~~any remaining Funds, not to exceed one hundred sixty million dollars (\$160,000,000), will be used to make an additional payment adjustment to disproportionate share hospitals for services provided in July, August, September, October, November and December, 1991, as provided in Rule .0204(g).~~
- (e) ~~If contributions are made pursuant to General Statute 143-23.2 during calendar year 1992, the Department has determined that it will use them as follows:~~
 - (1) ~~the contributed funds will provide the total non-federal share of Medicaid expenditures for disproportionate share hospital payments made pursuant to 10 NCAC 26H .0204(h) and the state portion of the total non-federal share for all other Medicaid expenditures attributable to such contributions.~~
 - (2) ~~40.193 percent of the contributed funds will be presented to the federal government to be matched pursuant to federal financial participation rules and will be used to support Medicaid program expenditures in SFY 91-92 or subsequent years and an amount not to exceed five hundred thousand dollars (\$500,000) to support Medicaid administrative expenditures in SFY 92-93 or subsequent years.~~

- (3) ~~the Department will present the remaining contributed funds upon receipt to the federal government to be matched pursuant to federal financial participation rules. The total of the contributed and matched funds hereinafter will be referred to as the "Funds" to be disbursed in the order set forth in this Rule.~~
- (4) ~~the Funds, not to exceed one hundred sixty million dollars (\$160,000,000) will first be used to make an additional payment adjustment to disproportionate share hospitals for services provided during January through June, 1992, as provided in 10 NCAC 26H .0204(h).~~
- (5) ~~the remaining Funds, not to exceed eighty million dollars (\$80,000,000), will next be used to make an additional payment adjustment to disproportionate share hospitals for services provided during July through September, 1992, as provided in 10 NCAC 26H .0204(h).~~
- (6) ~~any remaining Funds, will be used to support Medicaid program expenditures in SFY 91-92, SFY 92-93 or subsequent years.~~

(d) ~~Contributed funds shall be earmarked and maintained in a segregated account in accordance with General Statute 143-23.2(b).~~

Authority G.S. 108A-25(b); 108A-54; 108A-55; S.L. 1985, c. 479, s. 86; 42 C.F.R. 447, Subpart C.

.0207 PROVIDER PARTICIPATION

~~Payments made according to the standards and methods described in this plan are designed to enlist the participation of a majority of hospitals in the program so that eligible persons can receive medical care services included in the state plan at least to the extent these services are available to the general public.~~

Authority G.S. 108A-25(b); 108A-54; 108A-55; S.L. 1985, c. 479, s. 86; 42 C.F.R. 447, Subpart C.

.0208 PAYMENT IN FULL

~~Participation in the program shall be limited to hospitals who accept the amount paid in accordance with this plan as payment in full for services rendered to Medicaid recipients.~~

Authority G.S. 108A-25(b); 108A-54; 108A-55;

S.L. 1985, c. 479, s. 86; 42 C.F.R. 447, Subpart C.

**.0209 PAYMENT OF MEDICARE
PART A DEDUCTIBLES**

For payment of Medicare Part A deductibles, the Division of Medical Assistance will pay the Medicaid median per diem inpatient rate for one day in lieu of the Medicare Part A inpatient deductible, effective August 1, 1991. The median rate will be determined as of July 1 each year.

Authority G.S. 108A-25(b); 108A-54; 108A-55; 42 C.F.R. 447, Subpart C; S.L. 1991, c. 689, s. 95.

.0210 REIMBURSEMENT PRINCIPLES

Effective for discharges occurring on or after October 1, 1994, acute care general hospital inpatient services shall be reimbursed using a Diagnosis Related Groups (DRG) system, except as noted in Rules .0212 and .0215 of this Section.

Authority G.S. 108A-25(b); 108A-54; 108A-55; 42 C.F.R. 447, Subpart C.

**.0211 DRG RATE SETTING
METHODOLOGY**

(a) Diagnosis Related Groups is a system of classification for hospital inpatient services. For each hospital admission, a single DRG category is assigned based on the patient's diagnoses, age, procedures performed, length of stay, and discharge status. For claims with dates of services prior to October 1, 1994 payments shall be based on the reimbursement per diem in effect prior to October 1, 1994. However, for claims related to services where the admission was prior to October 1, 1994 and the discharge was after September 30, 1994, then the greater of the total per diem for services rendered prior to October 1, 1994, or the appropriate DRG payment shall be made.

(b) The Division of Medical Assistance (Division) uses the DRG assignment logic of the Medicare Grouper to assign individual claims to a DRG category. Medicare revises the Grouper each year in October. The Division shall install the most recent version of the Medicare Grouper implemented by Medicare.

The DRG, in the Medicare Grouper, related to the care of premature neonates and other newborns numbered 385 through 391, are replaced with the following classifications:

385 Neonate, died or transferred,
length of stay less than 3 days.

801 Birthweight less than 1,000 grams
802 Birthweight 1,000 - 1,499 grams
803 Birthweight 1,500 - 1,999 grams
804 Birthweight >= 2,000 grams,
with Respiratory Distress
Syndrome
805 Birthweight >= 2,000 grams,
premature with major problems
389 Birthweight >= 2,000 grams,
full term with major problems
390 Birthweight >= 2,000 grams,
full term with other problems or
premature without major problems
391 Birthweight >= 2,000 grams,
full term without complicating
diagnoses

(c) DRG relative weights are a measure of the relative resources required in the treatment of the average case falling within a particular DRG category. The average DRG weight for a group of services, such as all discharges from a particular hospital or all North Carolina Medicaid discharges, is known as the case Mix Index (CMI) for that group.

The Division establishes relative weights for each utilized DRG based on a recent data set of historical claims submitted for Medicaid recipients. Charges on each historical Claim are converted to estimated costs by applying the cost conversion factors from each hospital's submitted Medicare cost report to each billed line item. Cost estimates are standardized by removing direct and indirect medical education costs at the appropriate rates for each hospital.

Relative weights are calculated as the ratio of the average cost in each DRG to the overall average cost for all DRGs combined. Prior to calculating these averages, low statistical outlier claims are removed from the data set, and the costs of claims identified as high statistical outliers are capped at the statistical outlier threshold. The Division of Medical Assistance employs criteria for the identification of statistical outliers which are expected to result in the highest number of DRGs with statistically stable weights.

The Division of Medical Assistance employs a statistically valid methodology to determine

whether there are a sufficient number of recent claims to establish a stable weight for each DRG. For DRGs lacking sufficient volume, the Division sets relative weights using DRG weights generated from the North Carolina Medical Data Base Commission's discharge abstract file covering all inpatient services delivered in North Carolina hospitals. For DRGs in which there are an insufficient number of discharges in the Medical Data Base Commission data set, the Division sets relative weights based upon the published DRG weights for the Medicare program.

Relative weights will be recalculated when changes are made to the DRG Grouper logic. When relative weights are recalculated, the overall average CMI will be kept constant.

(d) The Division of Medical Assistance establishes a unit value for each hospital which represents the DRG payment rate for a DRG with a relative weight of one. This rate is established as follows:

- (1) Using the methodology described in Paragraph (c) of this Rule, the Division estimates the cost less direct and indirect medical education expense on claims for discharges occurring during calendar year 1993, using cost reports for hospital fiscal years ending during that period or the most recent cost report available. All cost estimates are adjusted to a common fiscal year and inflated to the 1995 rate year. The average cost per discharge for each provider is calculated.
- (2) Using the DRG weights to be effective on October 1, 1994, a CMI is calculated for each hospital for the same population of claims used to develop the cost per discharge amount in Subparagraph (d)(1) of this Rule. Each hospital's average cost per discharge is divided by its CMI to get the cost per discharge for a service with a DRG weight of one.
- (3) The amount calculated in Subparagraph (d)(2) of this Rule is reduced by 8% to account for outlier payments.
- (4) Hospitals are ranked in order of increasing CM adjusted cost per discharge. The DRG Unit Value for hospitals at or below the 33rd percentile in this ranking is set at the average of the hospital's own adjusted cost per discharge and the cost per discharge of the hospital at the 33rd percentile. The

DRG Unit Value for hospitals ranked above the 33rd percentile is set at the cost per discharge of the 33rd percentile hospital, multiplied by the hospital's won wage index adjustment, as determined in Subparagraph (d)(5) of this Rule.

(5) The wage index adjustment used in establishing the DRG rates effective October 1, 1994, is developed by dividing the published Medicare geographical area wage index for Federal Fiscal Year 1994 for each hospital by the average area wage index for all North Carolina hospitals weighted by their number of Medicaid discharges.

(6) The hospital unit values calculated in Subparagraph (d)(4) of this Rule shall be updated annually by the National Hospital Market Basket Index and the most recent actual and projected cost data available from the North Carolina Office of State Budget and Management.

(e) Reimbursement for capital expense is included in the DRG hospital rate described in Paragraph (d) of this Rule.

(f) Hospitals operating Medicare approved graduate medical education programs shall receive a DRG payment rate adjustment which reflects the reasonable direct and indirect costs of operating those programs.

(1) The Division defines reasonable direct medical education costs consistent with the base year cost per resident methodology described in 42 CFR 413.86. The ratio of the amount aggregate approved amount for graduate medical education costs at 42 CFR 413.86 (d) (1) to total reimbursable costs (per Medicare principles) is the North Carolina Medicaid direct medical education factor. The direct medical education factor is based on information supplied in the 1993 cost reports and shall not be routinely updated.

(2) The North Carolina Medicaid indirect medical education factor is computed by the following formula:

$$0.405$$

$$1.89 \left(\left(1 + R \right) - 1 \right)$$

where R equals the number of approved intern and resident FTEs divided by the

number of licensed beds. The indirect medical education factor will be updated annually based on statistics contained in cost reports filed during the previous year.

- (3) Hospitals operating an approved graduate medical education program shall have their DRG unit values increased by the sum of the direct and indirect medical education factors.

(g) Cost outlier payments are an additional payment made at the time a claim is processed for exceptionally costly services. These payments are subject to prior approval by the Division of Medical Assistance.

- (1) A cost outlier threshold is established for each DRG at the time DRG relative weights are calculated, using the same information used to establish those relative weights. The cost threshold is the greater of twenty-five thousand dollars (\$25,000) or mean cost for the DRG plus 1.96 standard deviations.
- (2) Charges for non-covered services and services not reimbursed under the inpatient DRG methodology (such as professional fees) are deducted from total billed charges. The remaining billed charges are converted to cost using a hospital specific cost to charge ratio. The cost to charge ratio excludes medical education costs.
- (3) If the net cost for the claim exceeds the cost outlier threshold, a cost outlier payment is made at 70% of the costs above the threshold.

(h) Day outlier payments are an additional payment made for exceptionally long lengths of stay on services provided to children under six at disproportionate share hospitals and children under age one at non-disproportionate share hospitals. These payments are subject to prior approval by the Division of Medical Assistance.

- (1) A day outlier threshold is established for each DRG at the time DRG relative weights are calculated, using the same information used to establish the relative weights. The day outlier threshold is the greater of 30 days or the arithmetical average length of stay for the DRG plus 1.96 standard deviations.
- (2) A day outlier per diem payment may be made for covered days in excess of the day outlier threshold at 70% of the

hospital's payment rate for the DRG rate divided by the DRG average length stay.

- (3) Services which qualify for cost outlier payments under Paragraph (g) of this Rule are not eligible for payment as day outliers.

Authority G.S. 108A-25(b); 108A-54; 108A-55; 42 C.F.R. 447, Subpart C.

.0212 EXCEPTIONS TO DRG REIMBURSEMENT

(a) Covered psychiatric and rehabilitation inpatient services provided in either specialty hospitals, Medicare recognized distinct part units (DPU), or other beds in general acute care hospitals shall be reimbursed on a per diem methodology.

- (1) For the purposes of this Section, psychiatric inpatient services are defined as admissions where the primary reason for admission would result in the assignment of DRGs in the range 424 through 432 and 436 through 437.

For the purposes of this Section, rehabilitation inpatient services are defined as admissions where the primary reason for admissions would result in the assignment of DRG 462. All services provided by specialty rehabilitation hospitals are presumed to come under this definition.

- (2) When a patient has a medically appropriate transfer from a medical or surgical bed to a psychiatric or rehabilitative distinct part unit within the same hospital, the admission to the distinct part unit shall be recognized as a separate service which is eligible for reimbursement under the per diem methodology.

Transfers occurring in general hospitals from acute care services to non-DPU psychiatric or rehabilitation services are not eligible for reimbursement under this Section. The entire hospital stay in these instances shall be reimbursed under the DRG methodology.

- (3) The per diem rate for psychiatric services is established at the lesser of the actual cost trended to the rate year or the calculated median rate of all hospitals providing psychiatric services

as derived from the most recent as filed cost reports.

- (4) Hospitals that do not routinely provide psychiatric services shall have their rate set at the median rate.
- (5) The per diem rate for rehabilitation services is established at the lesser of the actual cost trended to the rate year or the calculated median rate of all hospitals providing rehabilitation services as derived from the most recent filed cost reports.
- (6) Rates established under Rule .0212 Paragraph (a) of this Section are adjusted for inflation consistent with the methodology under Rule .0211 Subparagraph (d)(6) of this Section.

(b) To assure compliance with the separate upper payment limit for State-operated facilities, the hospitals operated by the Department of Human Resources and all the primary affiliated teaching hospitals for the University of North Carolina Medical Schools will be reimbursed their reasonable costs in accordance with the provisions of the Medicare Provider Reimbursement Manual. The Division shall utilize the DRG methodology to make interim payments to providers covered under this paragraph, setting the hospital unit value at a level which can best be expected to approximate reasonable cost. Interim payments made under the DRG methodology to these providers shall be retrospectively settled to reasonable cost.

Authority G.S. 108A-25(b); 108A-54; 108A-55; 42 C.F.R. 447, Subpart C.

.0213 DISPROPORTIONATE SHARE HOSPITALS

(a) Hospitals that serve a disproportionate share of low-income patients and have a Medicaid inpatient utilization rate of not less than one percent are eligible to receive rate adjustments. The cost report data and financial information that is required in order to qualify as a disproportionate share hospital effective April 1, 1991 is based on the fiscal year ending in 1989 for each hospital, as submitted to the Division of Medical Assistance on or before April 1, 1991. The cost report data and financial information to qualify as a disproportionate share hospital effective July 1, 1991 is based on the fiscal year ending in 1990 for each hospital, as submitted to the Division of Medical Assistance on or before September 1, 1991. In subsequent years, qualifications effective July 1 of any particular year are based on

each hospital's fiscal year ending in the preceding calendar year. The patient days, costs, revenues, or charges related to nursing facility services, swing-bed services, home health services, outpatient services, or any other service that is not a hospital inpatient service cannot be used to qualify for disproportionate share status. A hospital is deemed to be a disproportionate share hospital if:

- (1) The hospital has at least two obstetricians with staff privileges at the hospital who have agreed to provide obstetric services to individuals eligible for Medicaid. In the case of a hospital located in a rural area, the term obstetrician includes any physician with staff privileges at the hospital to perform non-emergency obstetric services as of December 21, 1987 or to a hospital that predominantly serves individuals under 18 years of age; and
- (2) The hospital's Medicaid inpatient utilization rate, defined as the percentage resulting from dividing Medicaid patient days by total patient days, is at least one standard deviation above the mean Medicaid inpatient utilization rate for all hospitals that receive Medicaid payments in the state; or
- (3) The hospital's low income utilization rate exceeds 25 percent. The low-income utilization rate is the sum of:
 - (A) The ratio of the sum of Medicaid inpatient revenues plus cash subsidies received from the State and local governments, divided by the hospital's total patient revenues; and
 - (B) The ratio of the hospital's gross inpatient charges for charity care less the cash subsidies for inpatient care received from the State and local governments divided by the hospital's total inpatient charges; or
- (4) The sum of the hospital's Medicaid revenues, bad debts allowance net of recoveries, and charity care exceeds 20 percent of gross patient revenues; or
- (5) The hospital, in ranking of hospitals in the State, from most to least in number of Medicaid patient days provided, is among the top group that accounts for 50% of the total Medicaid patient days provided by all hospitals in the State; or
- (6) Psychiatric Hospitals operated by the North Carolina Department of Human

Resources, Division of Mental Health, Developmental Disabilities, Substance Abuse Services (DMH/DD/SAS) and UNC Hospitals operated by the University of North Carolina.

(b) The rate adjustment for a disproportionate share hospital is 2.5 percent plus one fourth of one percent for each percentage point that a hospital's Medicaid inpatient utilization rate exceeds one standard deviation of the mean Medicaid inpatient utilization rate in the State. The rate adjustment is applied to a hospital's payment rate exclusive of any previous disproportionate share adjustments.

(c) Effective July 1, 1994, hospitals eligible under Subparagraph (a)(6) of this Rule will be eligible for disproportionate share payments, in addition to other payments made under the North Carolina Medicaid Hospital reimbursement methodology, from a disproportionate share pool under the circumstances specified below:

- (1) An eligible hospital will receive a monthly disproportionate share payment based on the monthly bed days of services to low income persons of each hospital divided by the total monthly bed days of services to low income persons of all hospitals items allocated funds.
- (2) This payment shall be in addition to the disproportionate share payments made in accordance with Rule .0217, Administrative Appeals of this Section. However, DMH/DD/SAS operated hospitals are not required to qualify under the requirements of Subparagraph (a) (1) through (5) of this Rule.
- (3) The amount of allocated funds shall be determined by the Director of the Division of Medical Assistance, but not to exceed the quarterly grant award of funds (plus appropriate non-federal match) earmarked for disproportionate share hospital payments less payments made under Subparagraphs (a)(1) through (5) and Rule .0217 divided by three.

In Subparagraph (c)(1) of this Rule, bed days of services to low income persons is defined as the number of bed days provided to individuals that have been determined by the hospital as patients that do not possess the financial resources to pay portions or all charges associated with care provided.

Low income persons include those persons that have been determined eligible for medical

assistance. The count of bed days used to determine payment is based upon the month immediately prior to the month that payments are made.

Disproportionate share payments to hospitals are limited in accordance with The Social Security Act as amended, Title XIX section 1923 (g), limit on amount of payment to hospitals.

Authority G.S. 108A-25(b); 108A-54; 108A-55; 42 C.F.R. 447, Subpart C.

.0214 OUT OF STATE HOSPITALS

(a) Except as noted in Paragraph (c) of this Rule, the Division of Medical Assistance shall reimburse out-of-state hospitals using the DRG methodology. The DRG hospital unit value for all out-of-state hospitals shall be equal to the unit value of the 25th percentile North Carolina hospital. Out-of-state providers are eligible to receive cost and day outlier payments, but not direct medical education payment adjustments.

(b) Hospitals that are certified for indirect medical education by Medicare may apply for an indirect medical education adjustment to its North Carolina rate.

(c) Hospitals certified as disproportionate share hospitals by the Medicaid agency in their home state may apply for a disproportionate share adjustment to their North Carolina Medicaid rate. The North Carolina disproportionate share hospital rate adjustment shall be the hospital's home state DSH adjustment, not to exceed 5%.

(d) The Division of Medical Assistance may enter into contractual relationships with certain hospitals providing highly specialized inpatient services, in which case reimbursement for inpatient services shall be based on contractual terms, not to exceed fair and reasonable cost.

Authority G.S. 108A-25(b); 108A-54; 108A-55; 42 C.F.R. 447, Subpart C.

.0215 SPECIAL SITUATION

(a) In order to be eligible for reimbursement under Section .0200 of this Subchapter, a patient must be admitted as an inpatient and stay past midnight in an inpatient bed. The only exceptions to this requirement are those admitted inpatients who die or are transferred to another acute care hospital on the day of admission. Hospital admissions prior to 72 hours after a previous inpatient hospital discharge are subject to review by the Division of Medical Assistance.

Services for patients admitted and discharged on

the same day and who are discharged to home or to a non-acute care facility must be billed as outpatient services. In addition patients who are admitted to observations status do not qualify as inpatients, even when they stay past midnight. Patients in observation status for more than 30 hours must either be discharged or converted to inpatient status.

(b) Outpatient services provided to patients within the 72 hour period prior to an inpatient admission in the same hospital shall be bundled with the inpatient billing.

(c) When a patient is transferred between hospitals, the discharging hospital shall receive a pro-rated payment equal to the normal DRG payment multiplied by the patient's actual length of stay divided by the geometric mean length of stay for the DRG. When the patient's actual length of stay equals or exceeds the geometric mean length of stay for the DRG, the transferring hospital receives full DRG payment. Transfers are eligible for cost outlier payments. The final discharging hospital shall receive the full DRG payment.

(d) Days for authorized skilled nursing for intermediate care level for service rendered in an acute care hospital shall be reimbursed at a rate equal to the average rate for all such Medicaid days based on the rates in effect for the long term care plan year beginning each October 1.

Days for lower than acute level of care for ventilator dependent patients in swing-bed hospitals or that have been down-graded through the utilization review process may be paid for up to 180 days at a lower level ventilator-dependent rate if the hospital is unable to place the patient in a lower level facility. An extension may be granted if in the opinion of the Division of Medical Assistance the condition of the patient prevents acceptance of the patient. a single all inclusive prospective per diem rate is paid, equal to the average rate paid to nursing facilities for ventilator-dependent services. The hospital must actively seek placement of the patient in an appropriate facility.

(e) When patients are transferred to a lower level of care prior to the expiration of the average length of stay for the applicable DRG, the Division of Medical Assistance shall not begin making payments at the skilled or intermediate care rate until the patient's total stay from the time of hospital admission exceeds the average length of stay for the acute care DRG. The reimbursement for any skilled nursing or intermediate care days which occur prior to the patient achieving the DRG average length of stay shall be the

responsibility of the discharging hospital.

(f) In state-operated hospitals, the appropriate lower level of care rates equal to the average rate paid to state operated nursing facilities, are paid for skilled care and intermediate care patients awaiting placement in a nursing facility bed.

(g) For an inpatient hospital stay where the patient is Medicaid eligible for only part of the stay, then the Medicaid program shall pay the DRG payment less the patient's liability.

Authority G.S. 108A-25(b); 108A-54; 108A-55; 42 C.F.R. 447 Subpart C.

.0216 COST REPORTING AND AUDITS

(a) On or before December 1 of each year each hospital is required to send to the Division of Medical Assistance one copy of its' fiscal year 1982 budget and any supplementary materials as submitted to Blue Cross and Blue Shield of North Carolina.

(b) Annual cost report shall be filed with the Medicare Intermediary, Blue Cross and Blue Shield of North Carolina in accordance with all standards, principles, and time schedules required by the Common Medicare/Medicaid Audits.

Authority G.S. 108A-25(b); 108A-54; 108A-55; 42 C.F.R. 447, Subpart C.

.0217 ADMINISTRATIVE RECONSIDERATION REVIEWS

Reconsideration reviews of rate determinations shall be processed in accordance with the provisions of 10 NCAC 26K. Requests for reconsideration reviews shall be submitted to the Division of Medical Assistance within 60 days after rate notification, unless unexpected conditions causing intense financial hardship arise, in which case a reconsideration review may be considered at any time.

Authority G.S. 108A-25(b); 108A-54; 108A-55; 42 C.F.R. 447, Subpart C.

.0218 BILLING STANDARDS

(a) Providers shall use codes from the International Classification of Diseases, 9th Revision, Clinical Modification (ICD-9-CM) to report diagnoses and procedures. Providers shall use the codes which are in effect at the time of discharge. The reporting of ICD-9-CM diagnosis and procedure codes shall follow national coding guidelines promulgated by the Health Care Financing Administration.

(b) Providers shall generally bill only after discharge. However, interim billings may be submitted 60 days after an admission and every 60 days thereafter. Bills subsequent to the first claim should be in the adjustment bill format and should include all applicable diagnoses and procedures, coded in the order which represents their precedence when the admission is considered as a whole.

Authority G.S. 108A-25(b); 108A-54; 108A-55; 42 C.F.R. 447, Subpart C.

.0219 PAYMENT OF MEDICARE PART A DEDUCTIBLES

For payment of Medicare Part A deductibles, the Division of Medical Assistance shall pay the Medicaid DRG payment less the amount paid by Medicare.

Authority G.S. 108A-25(b); 108A-54; 108A-55; 42 C.F.R. 447, Subpart C.

.0220 PAYMENT ASSURANCES

The state shall pay each hospital the amount determined for inpatient services provided by the hospital according to the standards and methods set forth in this Rule. In all circumstances involving third party payment, Medicaid shall be the payor of last resort.

Authority G.S. 108A-25(b); 108A-54; 108A-55; 42 C.F.R. 447, Subpart C.

.0221 PROVIDER PARTICIPATION

Payments made according to the standards and methods described in this plan are designed to enlist the participation of a majority of hospitals in the program so that eligible persons can receive medical care services included in the State Plan at least to the extent these services are available to the general public.

Authority G.S. 108A-25(b); 108A-54; 108A-55; 42 C.F.R. 447, Subpart C.

.0222 PAYMENT IN FULL

Participation in the program shall be limited to hospitals who accept the amount paid in accordance with this plan as payment in full for services rendered to Medicaid recipients.

Authority G.S. 108A-25(b); 108A-54; 108A-55; 42 C.F.R. 447, Subpart C.

TITLE 11 - DEPARTMENT OF INSURANCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Department of Insurance intends to amend rules cited as 11 NCAC 12 .0324 - .0325, .1304 and adopt .1501 - .1509.

The proposed effective date of this action is October 1, 1994.

The public hearing will be conducted at 10:00 a.m. on August 2, 1994 at the Dobbs Building, Third Floor Hearing Room, 430 N. Salisbury Street, Raleigh, NC 27611.

Reason for Proposed Action:

11 NCAC 12 .0324 - .0325 and .1304 - Clarify terminology.

11 NCAC 12 .1501 - .1509 - Comply with statute changes made during 1993 session of the General Assembly.

Comment Procedures: Written comments may be sent to Wake Hamrick at P.O. Box 26387, Raleigh, N.C. 27611. Oral presentations may be made at the public hearing. Anyone having questions should call Wake Hamrick at (919) 733-5060 or Ellen Sprenkel at 733-4529.

CHAPTER 12 - LIFE AND HEALTH DIVISION

SECTION .0300 - GENERAL PROVISIONS

.0324 HIV AND AIDS DISCRIMINATION PROHIBITED

~~AIDS and ARC must be treated as any other dread disease under policy provisions and applications. ARC must be defined within the form Human Immunodeficiency Virus (HIV) infection (symptomatic and asymptomatic) and Acquired Immune Deficiency Syndrome (AIDS) must be treated as any other illness or sickness under health insurance policy provisions and policy applications. HIV and AIDS must be defined within the policy and the application if any questions are asked about HIV and AIDS.~~

Statutory Authority G.S. 58-2-40; 58-3-150; 58-51-1; 58-51-85; 58-51-95.

**.0325 OCCUPATIONAL INJURIES
OR DISEASES**

~~Benefits for occupational injury or sickness shall be provided by payers of group health insurance benefits if an insured injured or sick employee is ineligible for workers' compensation benefits. Health insurance policies may not exclude coverage for work-related injuries or sickness unless benefits are paid or payable for such injuries or sickness under Chapter 97 of the General Statutes of North Carolina.~~

Statutory Authority G.S. 58-2-40; 58-3-150; 58-51-1; 58-51-85; 58-51-95.

**SECTION .1300 - SMALL EMPLOYER
GROUP HEALTH INSURANCE**

.1304 COMPLIANCE

(a) Each carrier and third party administrator shall file a report on North Carolina small employer group insurance activity annually on or before March 15, which report shall describe case characteristics and numbers of health benefit plans in various categories marketed or issued to small employers. The report shall be in a format prescribed by the Commissioner.

(b) Each carrier shall provide the same health benefit plan to eligible employees and dependents; provided, however, under G.S. 58-67-35(a)(5) and (a)(6), an HMO may offer its approved small employer health benefit plan in conjunction with an approved indemnity benefit plan to eligible employees and dependents, and the two plans must be of similar value in that the deductibles, copayments, and covered benefits must be comparable.

(c) A carrier shall not set contribution and participation requirements for the statutory plans that are more restrictive than those for the carrier's nonstatutory plans.

(d) If any eligible employee or dependent has qualifying existing coverage, as defined in G.S. 58-50-130(a)(5), and therefore does not participate in the employer's health benefit plan, a carrier is not required to issue or renew the employer's plan unless either:

- (1) at least two eligible employees in a group of seven or less elect to participate; or
- (2) at least 25 percent of eligible employees in a group of more than seven elect to participate.

(e) Each carrier shall offer both statutory plans to any small employer upon request or if the

carrier is unable to issue a nonstatutory plan to the small employer applicant.

(f) A carrier shall provide an extension of benefits to any insured who is a hospital inpatient until the insured is released by the hospital if the insured's existing coverage would end during the insured's hospital stay and if replacement coverage is not available to the insured, subject to the continued payment of monthly premiums or dues by the insured.

(g) New business applications submitted to a carrier on and after September 1, 1992, shall be accompanied by a statement signed by the producer and the small employer applicant that certifies that the employer understands that the firm may elect coverage under the statutory plans. The disclosure form shall be made part of such statement. A copy of the signed statement and disclosure form must be provided to the small employer applicant. The disclosure form shall be in a form prescribed by the Commissioner.

(h) If a carrier establishes more than one class of business under G.S. 58-50-113, the carrier shall maintain at least one basic and standard health care plan in each class of business so established. Nothing in this Section prevents a carrier from offering the statutory plans through an association or multiple employer trust.

Statutory Authority G.S. 58-2-40(1); 58-50-105; 58-50-113; 58-50-120(c)(4); 58-50-120(c)(6); 58-50-125(d); 58-50-130(a)(2); 58-50-130(a)(5); 58-50-130(d); 58-50-130(f).

**SECTION .1500 - UNIFORM
CLAIM FORMS**

.1501 DEFINITIONS

In this Section, unless the context clearly indicates otherwise:

- (1) "ADA J510 Form" means the health insurance claim form published in 1990 by the American Dental Association.
- (2) "CPT-4 Codes" means the Physician Current Procedural Terminology, Fourth Edition, published by the American Medical Association.
- (3) "County code" means the established Federal Information Processing Standards code number per county as used by the North Carolina State Data Center, Office of State Planning.
- (4) "Ethnic origin code" is the established Ethnic (Race) Code as used by the Economics and Statistics Administration.

- Bureau of Labor Statistics, U.S. Department of Commerce.
- (5) "HCFA" means the Health Care Financing Administration of the U.S. Department of Health and Human Services.
 - (6) "HCFA Form 1450 (UB92)" means the health insurance claim form published by the HCFA for use by institutional health care providers.
 - (7) "HCFA Form 1500" means the health insurance claim form published by the HCFA for use by individual health care providers.
 - (8) "HCPCS" means HCFA's Common Procedure Coding System, a coding system that describes products, supplies, procedures, and health care provider services; and includes the CPT-4 Codes, alphanumeric codes, and related modifiers. HCPCS includes:
 - (a) "HCPCS Level 1 Codes", which are the CPT-4 codes and modifiers for professional services and procedures;
 - (b) "HCPCS Level 2 Codes", which are national alphanumeric codes and modifiers for health care products and supplier, as well as some codes for professional services not included in the CPT-4 Codes;
 - (c) "HCPCS Level 3 Codes", which are local alphanumeric codes and modifiers for items and services not included in HCPCS Level 1 or HCPCS Level 2.
 - (9) "ICD-9-CM Codes" means the diagnosis and procedure codes in the International Classification of Diseases, Ninth Revision, Clinical Modifications, published by the U.S. Department of Health and Human Services.
 - (10) "Individual health care provider" includes any individual, natural, person who, under Chapter 90 of the General Statutes is licensed, registered, or certified to engage in the practice of or performs duties associated with any of the following: medicine, surgery, dentistry, pharmacy, optometry, midwifery, osteopathy, podiatry, chiropractic, radiology, nursing, physiotherapy, pathology, anesthesiology, anesthesia, laboratory analysis, rendering assistance to a physician, dental hygiene, psychiatry, or psychology.
 - (11) "Institutional health care provider"

includes:

- (a) a hospital licensed under G.S. 131E-176(13);
- (b) an ambulatory surgical facility licensed under G.S. 131E-176(1a);
- (c) a health service facility licensed under G.S. 131E-176(9b);
- (d) a home health agency licensed under G.S. 131E-176(12);
- (e) any of the entities listed in G.S. 58-55-35.
- (12) "Payor" means an entity that provides a "health benefit plan", as defined in G.S. 58-2-171(b).
- (13) "Standard claim form" means the HCFA Form 1450 (UB92), HCFA Form 1500, or ADA J510 Form.
- (14) "SUBC" means the State Uniform Billing Committee.

Statutory Authority G.S. 58-2-40; 58-3-171.

.1502 REQUIREMENTS FOR USE OF HCFA FORM 1450 (UB92)

- (a) Effective January 1, 1995, the HCFA Form 1450 (UB92) will be the standard claim form for all manual billing by institutional health care providers; and the HCFA Form 1450 will be accepted by all payors conducting business in this State.
- (b) Effective January 1, 1995, the following additional information and placement location will be required for the HCFA Form 1450 (UB92):
 - (1) The payor I.D. number shall be located as the first data element in form locator 50 (lines A, B, C). This element will be followed by a "/" if additional information is recorded in this form locator. Only codes identified for use in that field as defined in the Uniform Billing Form HCFA 1450 (UB92) Manual as published by the SUBC will be used.
 - (2) The provider tax I.D. number shall be located in form locator 5.
 - (3) The ethnic origin code shall be located in form locator 24-30 (Condition Codes), using Code Z0-Z9 (see definitions as defined in the State Uniform Billing Manual) to translate the ethnic origin codes.
 - (4) The county code shall be located in form locator 13 as the last entry in the address field as an additional code printed after the zip code, and it shall

be preceded by the symbol "/".

(c) Effective October 1, 1995, the cause of injury code shall be located in form locator 77. This code will be required on all HCFA Form 1450 (UB92) claims generated by institutional health care providers for claims of inpatients and of patients treated in emergency rooms or trauma centers; and where the diagnosis includes an injury diagnosis, which means a diagnostic code in the range or 800-999 as defined in the ICD-9 coding manual. Coding of the cause of injury shall be in accordance with national standards created in the Guidelines of Cooperating Parties, a national coding standards setting group. The absence of this code may not be used to deny the payment of a claim.

(d) Payors may require institutional health care providers to use only the following coding systems for the filing of claims for health care services:

- (1) ICD-9-CM Codes to report all diagnoses and reasons for encounters - based upon code level changes made effective October 1 of each year.
- (2) HCPCS Level 1 and 2 Codes - based upon code level changes made effective October 1 of each year.
- (3) CPT-4 Codes based upon code level changes made effective April 1 of each year.

(e) When there is no applicable HCPCS Level 1 or Level 2 Code or modifier, the payor may establish its own code or modifier. A complete list of all codes and modifiers established by payors must be published by and available upon request from payors by January 1, 1995.

(f) Place of service codes and descriptions will be recognized by all payors processing claims for health care services rendered in this State on and after January 1, 1996.

(g) Both HCFA physician and specialty codes and North Carolina Board of Medical Examiners specialty definitions shall be recognized by payors processing claims for health care services rendered in this State on and after January 1, 1996.

Statutory Authority G.S. 58-2-40; 58-3-171.

1503 REQUIREMENTS FOR USE OF HCFA FORM 1500

(a) Effective January 1, 1995, the HCFA Form 500 will be the standard claim form for all manual individual health care provider billing; and the HCFA Form 1500 will be accepted by all payors conducting business in this State.

(b) Effective January 1, 1995, the following

additional information and placement location will be required for the HCFA Form 1500:

- (1) The payor I.D. number shall be located as the first data element in form locator 11. This element will be followed by a "/" if additional information is recorded in this form locator. Only codes identified for use in that field as defined in the Uniform Billing Form HCFA 1450 (UB92) Manual as published by the SUBC will be used.
- (2) The provider tax I.D. number shall be located in form locator 25.
- (3) The ethnic origin code shall be located in form locator 1a as the subsequent set of numbers in that form locator; the first set of numbers being the insured's I.D. number. Codes Z0-Z9 (see definitions as defined in the State Uniform Billing Manual), to translate the ethnic origin codes, will be used to designate the ethnic origin and preceded by the symbol "/".
- (4) The county code shall be located in form locator 5 (zip code) and shall be the last entry in this form locator as an additional code printed after the zip code; and it shall be preceded by the symbol "/".

(c) Payors may require individual health care providers to use only the following coding system for the filing of claims for health care services:

- (1) ICD-9-CM Codes to report all diagnoses and reasons for encounters - based upon code level changes made effective October 1 of each year.
- (2) HCPCS Level 1 and 2 Codes - based upon code level changes made effective October 1 of each year.
- (3) CPT-4 Codes based upon code level changes made effective April 1 of each year.

(d) When there is no applicable HCPCS Level 1 or Level 2 Code or modifier, the payor may establish its own code or modifier. A complete list of all codes and modifiers established by payors must be published by and available upon request from payors by January 1, 1995.

(e) Type of service codes may not be used after December 31, 1995.

(f) Place of service codes and descriptions will be recognized by all payors processing claims for services rendered in North Carolina on and after January 1, 1996.

(g) Both HCFA physician and specialty codes

and North Carolina Board of Medical Examiners specialty definitions shall be recognized by payors processing claims for services rendered in North Carolina on and after January 1, 1996.

(h) A Uniform Billing Manual, similar to the concept used by the SUBC for HCFA Form 1450 (UB92), shall be developed to set forth HCFA Form 1500 standards by August 1, 1995. The SUBC, along with the North Carolina Medical Society, may develop and recommend a Uniform Billing Manual to the Commissioner by August 1, 1995. This manual may include standards established by the National Uniform Billing Committee as reflected in its ANSI 837 Guide to be released in February of 1995.

Statutory Authority G.S. 58-2-40; 58-3-171.

.1504 REQUIREMENTS FOR USE OF ADA FORM J512

(a) Effective January 1, 1995, Dentists shall use the ADA J510 Form and instructions for all manual claims filing with payors.

- (1) The payor I.D. number shall be located in form locator 10. This element will be followed by a "/" if additional information is recorded in this form locator. Only codes identified for use in that field as defined in the Uniform Billing Form HCFA 1450 (UB92) Manual as published by the SUBC will be used.
- (2) The provider tax I.D. number shall be located in form locator 18.
- (3) The ethnic origin code shall be located in form locator 31 using Code Z0-Z9 (see definitions as defined in the State Uniform Billing Manual), to translate the ethnic origin codes, and shall be the first entry on the first line of that form locator, and it shall be followed by the symbol "/".
- (4) The county code shall be located in form locator 6 and shall be the last entry in this form locator as an additional code printed after the zip code, and it shall be preceded by the symbol "/".

(b) A Uniform Billing Manual, similar to the concept used by the SUBC for the HCFA Form 1450 (UB92), shall be developed to set standards for the ADA J510 Form by August 1, 1995. The North Carolina Dental Society may develop and recommend a Uniform Billing Manual to the Commissioner on or before August 1, 1995.

Statutory Authority G.S. 58-2-40; 58-3-171.

.1505 MANAGED CARE FORMS

(a) As used in this Rule, "managed care plan" includes a health maintenance organization, a preferred provider organization or arrangement, or an exclusive provider panel.

(b) The following managed care forms may be used by managed care plans, but shall not be a part of the standard claim form:

- (1) An "out-of-network" justification form will be used by patients filing claims with their managed care plans when they have to justify the reasons they sought out-of-network health care services. This form will be standardized; and the managed care plan industry shall develop and file this form with the Commissioner for approval on or before October 1, 1995.
- (2) A "patient encounter form and electronic format" will be used by managed care plans to record and report encounter information. This form will provide information similar to the HCFA Form 1450 (UB92) and HCFA Form 1500 and will include information on patient identification, dates of services provided, types of services provided, and identities of health care providers. This form and electronic formats will be standardized; and the managed care plan industry shall develop and file these with the Commissioner for approval on or before October 1, 1995.

Statutory Authority G.S. 58-2-40; 58-3-171.

.1506 ELECTRONIC FORMAT STANDARDS

(a) As used in this Rule, "ASC X12 Standard Format" means the standards for electronic data interchange within the health care provider industry developed by the Accredited Standards Committee X12 Insurance Subcommittee of the American National Standards Institute.

(b) Payors and health care providers that receive or generate claims or send payments by electronic means shall, by October 1, 1996, accept or generate the appropriate ASC X12 Standard Format for their health care claims submission and remittance transactions.

Statutory Authority G.S. 58-2-40; 58-3-171.

.1507 ATTACHMENT FORM OR FORMAT

(a) As used in this Rule, "attachment form or format" means a form, document, or communication of any kind used by a payor to request additional information other than that contained on the standard claim form, from a health care provider, in connection with processing a claim for payment.

(b) Effective January 1, 1995, no additional attachment forms or formats may be used except as authorized by this Section. Payors may use local use blocks on the standard claim form or obtain prior approval from the Commissioner to use other information in addition to that contained in the standard claim form.

(c) All attachment forms or formats in use on October 1, 1994, must be submitted by payors to the Commissioner for registration on or before January 1, 1995, and may continue to be used thereafter if they are in compliance with this Section. Payors may not require the submission of information already contained in the standard claim form, or any other information not necessary for the processing of a claim. After January 1, 1995, no additional attachments shall be used unless filed with and approved by the Commissioner.

(d) The SUBC may recommend to the Commissioner any changes to the standard claim form on or before October 1 of each year beginning in 1995.

Statutory Authority G.S. 58-2-40; 58-3-171.

.1508 MEDICARE SUPPLEMENT PAYORS

Effective October 1, 1996, payors of Medicare supplement insurance shall electronically interface claims data with the Medicare Section of HCFA.

Statutory Authority G.S. 58-2-40; 58-3-171.

.1509 PATIENT SUBMITTED CLAIM FORMS

The standard claim form shall be provided to any patient by any health care provider if that patient must submit a claim to a payor. The standard claim form will be provided as the initial bill for payment of services and will be used by the patient to request reimbursement from a payor. Health care providers may also continue to provide patients billing statements for subsequent billing of the same services. No payor may require any additional documentation from a patient to support a claim for reimbursement payment by a patient if the information required is already contained on

the standard claim form. No payor shall require any patient to submit claims or other information in an electronic format.

Statutory Authority G.S. 58-2-40; 58-3-171.

TITLE 12 - DEPARTMENT OF JUSTICE

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Department of Justice, State Bureau of Investigation intends to amend rules cited as 12 NCAC 4E .0104, .0201 - .0202, .0303, .0402; 4F .0201, .0401; and 4G .0102.

The proposed effective date of this action is October 1, 1994.

The public hearing will be conducted at 10:00 a.m. on August 9, 1994 at the Division of Criminal Information, 407 N. Blount Street, Raleigh, North Carolina 27601.

Reason for Proposed Action: These rules are being amended in order to clarify existing rules, modify CCH log requirements, and address new general certification requirements.

Comment Procedures: Comments may be submitted in writing or may be presented orally at the public hearing. Written comments should be submitted to E. K. Best, Division of Criminal Information, 407 N. Blount Street, Raleigh, N.C. 27601 by August 15th.

CHAPTER 4 -DIVISION OF CRIMINAL INFORMATION

SUBCHAPTER 4E - ORGANIZATION RULES AND FUNCTIONS

SECTION .0100 - GENERAL PROVISIONS

.0104 DEFINITIONS

The following definitions shall apply throughout Chapter 4 of this Title:

- (1) "Administration of Criminal Justice" means the performance of any of the following activities: detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, and correctional supervision or rehabilitation

- of accused criminal offenders. The administration of criminal justice shall include criminal identification activities and the collection, storage, and dissemination of criminal history record information.
- (2) "Administrative Message" means messages that may be used by DCI terminal operators to exchange official information of an administrative nature between in-state law enforcement/criminal justice agencies and out-of-state agencies by means of NLETS.
- (3) "Authorized Requestor" means any person who is authorized and/or approved to receive state and/or national criminal history data by virtue of being:
 - (a) a member of an approved law enforcement/criminal justice agency; or
 - (b) any DCI or NCIC authorized non-criminal justice agency pursuant to local ordinance or a state or federal law.
- (4) "Automated Fingerprint Identification System" (AFIS) means a computer based system for reading, encoding, matching, storage and retrieval of fingerprint minutiae and images.
- (5) "CCH" means computerized criminal history.
- (6) "Criminal History Record Information" (CHRI) means information collected by and maintained in the files of criminal justice agencies concerning individuals, consisting of identifiable descriptions, notations of arrest, detentions, indictments or other formal criminal charges. This also includes any disposition, sentencing, correctional supervision, and release information. This term does not include identification information such as fingerprint records to the extent that such information does not indicate formal involvement of the individual in the criminal justice system.
- (7) "Criminal Justice Agency" means the courts, a government agency, or any subunit thereof which performs the administration of criminal justice pursuant to statute or executive order and which allocates over 50 percent of its annual budget to the administration of criminal justice.
- (8) "Criminal Justice Board" means a board composed of heads of law enforcement / criminal justice agencies which have management control over a communications center.
- (9) "DCI" means Division of Criminal Information.
- (10) "DCI Manual" means a manual containing guidelines for users on the operation of the DCI equipment and providing explanations as to what information may be accessed through the DCI.
- (11) "Direct Access" means an authorized agency has access to the DCI network through a DCI terminal or through a computer interface.
- (12) "Disposition" means information on any action which results in termination or indeterminate suspension of the prosecution of a criminal charge.
- (13) "Driver's History" means information maintained on individual operators to include name, address, date of birth, license issuance and expiration information or control number issuance information, and moving vehicle violation convictions.
- (14) "Dissemination" means any transfer of information, whether orally, in writing, or by electronic means.
- (15) "DMV" means the North Carolina Division of Motor Vehicles.
- (16) "Expunge" means to remove criminal history record information from the DCI and FBI computerized criminal history and identification files pursuant to state statute.
- (17) "Full Access" means the ability of a terminal to access those programs developed and administered by the DCI for local law enforcement and criminal justice agencies specifically including state and national CCH and driver history access.
- (18) "Full-certification" means being operator certified with the ability and knowledge to use the DCI terminal accessing those programs which are developed and administered by DCI for local law enforcement and criminal justice agencies.
- (19) "Hardware" means the physical computer equipment or devices and the peripheral equipment forming the DCI information processing system including the Automated Fingerprint Identification System (AFIS).
- (20) "Hot Files" means DCI/NCIC files which contain information on stolen and recovered

- ered property and wanted/missing persons as entered by agencies across the nation.
- (21) "Inappropriate Message" means any message which is incomplete, unnecessary, excessive, abusive, or not in keeping with the rules and regulations of DCI.
- (22) "Incident Base" is a system used to collect criminal offense and arrest information for each criminal offense reported.
- (23) "Indirect Access" means access to DCI through another agency's direct access terminal.
- (24) "In-service Certification" means an operator's certification program provided by local departments and approved by DCI to certify and/or re-certify their employees.
- (25) "Interstate Identification Index (III)" means the FBI's files containing identifying information on persons who have been arrested in the United States for which fingerprints have been submitted to and retained by the FBI.
- (26) "Interface" means a method (either software or hardware) to communicate between two computers or computer systems.
- (27) "IRKS" means an internal records keeping system which DCI makes available to North Carolina criminal justice agencies. Included in IRKS is a jail record keeping system (JRKS).
- (28) "JRKS" means a jail record keeping system that aids agencies in accounting for their jail detainees.
- (29) "Limited Access" means the ability of a terminal to access those programs which are developed and administered by the DCI for local law enforcement and criminal justice agencies specifically excluding state and national CCH and driver history access.
- (30) "National Fingerprint File (NFF)" means an FBI maintained enhancement to the Interstate Identification Index whereby only a single fingerprint card is submitted per state to the FBI for each offender at the national level. Arrest fingerprint cards from the same state for subsequent arrests as well as final dispositions and expungements will be maintained at the state level.
- (31) "NCIC" means the National Crime Information Center which is maintained in Washington, D.C. by the FBI.
- (32) "Need-to-know" means for purposes of the administration of criminal justice or for purposes of criminal justice agency employment.
- (33) "NLETS" means National Law Enforcement Telecommunications System, which is maintained in Phoenix, Arizona.
- (34) "Non-criminal Justice Agency" means any agency created by law with the statutory authority to access State Bureau of Investigation criminal history files for purposes of non-criminal justice licensing or employment.
- (35) "Non-criminal Justice Information" means information that does not directly pertain to the necessary operation of a law enforcement/criminal justice agency.
- (36) "Official Record Holder" means the eligible agency that maintains the master documentation and all investigative supplements of the hot file entry.
- (37) "Operator Identifier" means a unique identifier assigned by DCI to all certified operators which is used for gaining access to the DCI network and for the identification of certified operators.
- (38) "Ordinance" means a rule or law promulgated by a governmental authority especially one adopted and enforced by a municipality or other local authority.
- (39) "ORI" means originating routing identifier, which is a unique alpha numeric identifier assigned by NCIC to each authorized criminal justice agency, identifying that agency in all computer transactions.
- (40) "Private Agency" means any agency that has contracted with a government agency to provide services necessary to the administration of criminal justice.
- (41) "Re-certification" means renewal of an operator's initial certification every 24 months.
- (42) "Right-to-know" means for the right of an individual to inspect his or her own record or for other purposes as set forth by statute or court order.
- (43) "Secondary Dissemination" means the transfer of CCH/CHRI information to another ~~agency in addition to the inquiring agency.~~ criminal justice agency or anyone legally entitled to receive such information who is outside the initial user

- agency.
- (44) "Servicing Agreement" means an agreement between a terminal agency and a non-terminal agency to provide DCI terminal services.
 - (45) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico and any territory or possession of the United States.
 - (46) "Statute" means a law enacted by a state's legislative branch of government.
 - (47) "Switched Message" means messages that may be used by DCI terminal personnel to exchange official information between law enforcement/criminal justice agencies within North Carolina.
 - (48) "Terminal" means a video screen with a typewriter keyboard used by DCI to accomplish message switching, DMV inquiries, functional messages, and DCI, NCIC, NLETS on-line file transactions.
 - (49) "Terminal Agency" means any agency that has obtained a DCI terminal.
 - (50) "UCR" means a Uniform Crime Reporting program to collect a summary of criminal offense and arrest information.
 - (51) "Unapproved need-to-know" means any reason for requesting criminal or driver's history data which is not within the scope of authorized purpose codes as defined in the DCI on-line manual.
 - (52) "User Agreement" means an agreement between a terminal agency and DCI whereby the agency agrees to meet and fulfill all DCI rules and regulations.

Statutory Authority G.S. 114-10; 114-10.1.

SECTION .0200 - REQUIREMENTS FOR ACCESS

.0201 ELIGIBILITY FOR FULL OR LIMITED ACCESS TO THE DCI NETWORK

(a) Eligibility for a full access DCI terminal or a computer interface with DCI is restricted to agencies which have obtained an NCIC full access ORI and have complied with Rule .0202 of this Section.

(b) Eligibility for a limited access DCI terminal or computer interface with DCI is restricted to agencies which have obtained an NCIC or NLETS assigned limited access ORI and have complied with Rule .0202 of this Section.

(c) Any agency in this state desiring an ORI shall make a written request to the SBI Assistant Director for DCI. Accompanying the written request shall be a copy of the state or local law which establishes such agency and describes the agency's functions and authority. The SBI Assistant Director for DCI shall, on the basis of his findings, obtain an FBI/NCIC ORI or an NLETS assigned ORI. If the request is denied by the FBI and/or NLETS, the Assistant Director for DCI shall provide written findings to the requesting agency outlining the necessary elements to obtain an ORI.

Statutory Authority G.S. 114-10; 114-10.1.

.0202 MANAGEMENT CONTROL REQUIREMENTS

Each ~~full~~ direct access DCI terminal, computer interface with the DCI, and those personnel who operate the terminal must be under the direct and immediate management control of a criminal justice agency, criminal justice board or an NCIC/DCI approved non-criminal justice agency. The degree of management control shall be such that the agency head, board or approved agency has the authority to:

- (1) set policies and priorities concerning the use and operation of terminals or computers accessing DCI;
- (2) hire, supervise, suspend or dismiss those personnel who will be connected with the operation or use of the terminal or computers accessing DCI;
- (3) restrict unauthorized personnel from access or use of equipment accessing DCI; and
- (4) assure compliance with all rules and regulations of DCI in the operation of equipment or use of all information received.

Statutory Authority G.S. 114-10; 114-10.1.

SECTION .0300 - AGREEMENTS

.0303 SERVICING AGREEMENT

(a) Any authorized agency pursuant to Rule .0201 of this Subchapter with direct access to DCI's computer which provides access to a non-terminal agency shall enter into a written Servicing Agreement with the serviced agency. The agreement shall include but not be limited to the following information:

- (1) the necessity for valid and accurate

information being submitted for entry into DCI;

- (2) the necessity for documentation to substantiate data entered into DCI;
- (3) the necessity of adopting timely measures for entering, correcting or canceling data in DCI;
- (4) DCI validation requirements;
- (5) the importance of confidentiality of information provided by DCI;
- (6) liabilities;
- (7) the ability to confirm a hit 24 hours a day; and
- (8) the necessity of using the ORI of the official record holder in record entries and updates; and
- (9) the necessity of using the ORI of the initial user when making inquiries.

(b) DCI will provide a sample Servicing Agreement to any agency entering into said agreement.

(c) The Servicing Agreement must be signed by the servicing agency and the non-terminal agency, must be notarized, and a copy must be forwarded to DCI.

(d) DCI shall be notified of any cancellations or changes made in servicing agreements.

Statutory Authority G.S. 114-10; 114-10.1.

SECTION .0400 - DCI TERMINAL OPERATOR

0402 CERTIFICATION AND RECERTIFICATION OF DCI OPERATORS

(a) ~~Authorized agency personnel, who are assigned the duty of operating the DCI terminal, shall be certified by DCI within 120 days of employment with certification renewed at least every 24 months.~~ Authorized agency personnel who are assigned the duty of operating a DCI terminal or who operate a terminal accessing DCI via an approved interface shall be certified within 20 days from employment or assignment to terminal operation duties. Certification is to be awarded based on achieving a test score of 80% or greater. Recertification is required every 24 months and can be obtained any time 90 days prior to expiration. Certification and recertification is available by one of the following methods:

- (1) "General Certification" will be provided by DCI which certifies and recertifies an operator in the broad uses and capabilities available on the DCI network. The initial certification of an operator

will be awarded upon attendance and successful completion of the Introduction of DCI Network class. A General Certification student may also take on or more additional modules offered by DCI which teach the specific functions of the Network applicable to their job duties. An operator will only be authorized to perform those functions in which they have been trained and certified. Successful recertification can be accomplished by attending General Certification as described above or by enrolling on a "testing only" day until expiration of the current certification period. Failure of any module other than Introduction of DCI Network after the current certification period will require the student to attend the respective class and test. An agency head may require an individual to successfully complete all or certain specified modules prior to receiving certification or recertification.

- (2) (3) "Specialized Certification" certifies and re-certifies an operator through a specialized training program provided by employing agency or a host interface agency that provides computer access to DCI. Approval for a "Specialized Certification Program" will be based upon special training needs that are not met by the "General Certification Program" or the cost effectiveness for both the user agency and DCI. Agencies wanting to adopt a specialized program must submit a written proposal to DCI outlining the program to be provided to its personnel. The proposal must be submitted in standard format as required by DCI which includes: types of participants, course contents, implementation methods, instructional methods, and program coordinator duties. DCI personnel will review the proposal and provide a written response of approval or denial. If the proposal is denied, the agency may request an appeal hearing before the Advisory Policy Board. If the proposal is approved, the program coordinator must submit training documentation to DCI for approval to meet DCI/NCIC training standards and policies. The instructor for each approved "Specialized

Certification Program" must have successfully completed the North Carolina Law Enforcement Instructor Certification Course and must maintain an active DCI "General Certification" which includes all modules being offered in the "Specialized Certification Program". Recertification can be obtained by challenging and passing the approved "Specialized Certification Test" or by attending and passing classes as specified in the agencies approved "Specialized Certification Program".

(b) DCI issues three types of certification:

(1) "Full certification" certifies a person with the ability and knowledge to use those programs which are developed and administered by DCI for local law enforcement and criminal justice agencies. To obtain an initial full certification, authorized personnel must attend not less than 28 hours of instruction concerning the proper use and control of information obtained from a DCI terminal;

(2) "Re-certification" renews a full certification at least every 24 months after the initial certification is issued. Re-certification may be obtained by attending the two day re-certification class if initial certification has not expired or if an individual has obtained a 30 day extension. If the initial certification has expired, he/she must attend the entire initial certification classroom instruction. An individual may retain his original certification date if re-certification class is attended up to 90 days prior to the expiration date; and

(b) Enrollment will be necessary for student attendance to any training or testing class for DCI operators. Enrollment will be requested and approved by the agency head or where applicable a communications supervisor of an authorized agency as defined in Rules .0201 and .0202 of this Subchapter and personnel must meet the management control requirements outlined in Section .0200 of this Subchapter. DCI will maintain enrollment for all "General Certification" classes and the administering agency will maintain enrollment for each "Special Certification" program. Enrollment shall be done on a form or such automated method provided by DCI. The

enrollment procedure for "Special Certification" will be defined within the approved plan and be responsive to the students needs which it serves. The enrollment procedure for General Certification or Recertification are:

- (1) A search of the training or testing class files shall be performed by the enrolling agency to determine whether a class has any vacancies.
- (2) If there is a vacancy, the enrollment will be entered into the class enrollment file in a manner prescribed by DCI.
- (3) The enrolling agency must insure the student has been accepted in class prior to sending them to class.
- (4) When classes become full, DCI is to assist agencies enroll their personnel by establishing waiting lists, identifying alternative classes or if the demand warrants, establish and additional class.
- (5) All Enrollments must be accepted by DCI at least two work days prior to the training or test class.
- (6) A copy of each enrollment must be signed by the Agency Head, or applicable communication's supervisor, and maintained on file for two years by the enrolling agency. This document is subject to inspection by representatives of the Division as reasonable times.

(e) Enrollment will be necessary in order for DCI instructors to admit a student in a DCI certification or re-certification class. Enrollment procedures shall be as follows:

- (1) A search of the certification class files shall be performed to determine whether a class has any vacancies;
- (2) If there is a vacancy, an enrollment form signed by the department head, or when applicable, by a communications supervisor, which lists the individuals to be enrolled in the specific training class shall be submitted to DCI no later than five working days before the class is scheduled to begin. If for some reason all personnel cannot be accommodated, DCI will promptly contact the department head or supervisor with an explanation of why all personnel cannot be accommodated in the class requested;
- (3) A search of the certification class files shall be performed by the agency enrolling personnel to verify that the requested personnel have been enrolled

in the class requested; and
(4) ~~Late enrollment may be made by the department head or when applicable, by a communications supervisor, by either sending a switch message to terminal PIH or by faxing a copy of a properly completed late enrollment form to DCI via phone number (919) 733-8378. Late enrollment by switch message must include the name and social security number of personnel to be enrolled in the class. Employees should not be sent to class until a confirmation of receipt and space availability has been received from DCI. The employee must bring a completed enrollment form signed by the agency head or when applicable, by the communications supervisor, to class if the enrollment is by switch message.~~

(c) New personnel hired or personnel newly assigned to duties of a terminal operator shall receive an indoctrination and hands-on training on the basic functions and terminology of the DCI system by their own agency prior to attending certification class. Such personnel may operate a terminal accessing DCI while obtaining indoctrination if such personnel are directly supervised by a certified operator and are within the 120 day training period.

(d) ~~New personnel hired or personnel newly assigned the duties of a terminal operator shall receive an indoctrination and hands-on training on the basic functions and terminology of the DCI system by their own agency prior to attending certification class. Such personnel may operate a terminal accessing DCI while obtaining indoctrination if such personnel are directly supervised by a certified operator.~~

(d) Any individual who's certification has expired may be allowed to retest as a recertification student up to 90 days after their expiration. The individual will not be able to operate the terminal during the time between expiration and passing the recertification test(s). Any individual who's certification has expired more than 90 days will be required to attend and successfully complete training classes.

(e) ~~Following the instruction on full certification, in service certification or re-certification classes, a test will be administered and a minimum grade of 80 percent must be attained in order for a person to become operator certified.~~

(e) Any agency which allows an individual to

operate a terminal accessing DCI who is not certified or who is not within the 120 day training period and directly supervised by a certified operator will be in violation of this Rule and subject to the provisions of 12 NCAC 4G .0102(b) of this Chapter.

(f) ~~DCI will notify the employee's supervisor of the grade attained. If 80 percent or more has been attained, the employee is certified upon receipt of notice whether verbal or written.~~

(f) Any agency personnel using a certified operator's identifier other than their own to gain access to DCI and violating a DCI procedure or for the purpose of concealing their identity will be in violation of this Rule and subject to the provisions of 12 NCAC 4G .0102(c) of this Chapter.

(g) ~~Any agency which allows an individual to operate a terminal or interface terminal accessing DCI who is not certified or who is not within the 120 day training period and directly supervised by a certified operator will be in violation of this Rule and subject to the provisions of Subchapter 4G Rule .0102(b) of this Chapter.~~

(g) When a DCI certified operator leaves the employment of their agency, the Agency Head will notify DCI within 24 hours. This notification is to allow DCI to immediately remove that operator's identification in the network until such time as they are employed by another authorized agency.

(h) ~~Any agency personnel using a certified operator's identifier other than their own to gain access to DCI and violating a DCI procedure will be in violation of this Rule and subject to the provisions of Subchapter 4G Rule .0102(e) of this Chapter.~~

Statutory Authority G.S. 114-10; 114-10.1.

SUBCHAPTER 4F - SECURITY AND PRIVACY

SECTION .0200 - DCI/NCIC HOT FILES

.0201 DOCUMENTATION AND ACCURACY

(a) Law enforcement and criminal justice agencies have the capability to enter stolen/recovered property and wanted/missing persons into the DCI/NCIC hot files. Any record entered into the hot files must be documented. The documentation required is:

- (1) a theft report of items of stolen property;
- (2) an active warrant for the entry of

- wanted persons;
- (3) a missing person report and, if a juvenile, a written statement from a parent, spouse, family member, or legal guardian verifying the date of birth and confirming that a person is missing; or
 - (4) a medical examiner's report for an unidentified dead person entry.

(b) All DCI/NCIC hot file entries must be complete and accurately reflect the information contained in the agency's investigative documentation at the point of initial entry or modification. This process must be checked by a second party who will initial and date a copy of the record indicating accuracy has been determined.

Statutory Authority G.S. 114-10; 114-10.1.

SECTION .0400 - COMPUTERIZED CRIMINAL HISTORY ACCESS AND USE REQUIREMENTS

.0401 DISSEMINATION OF CCH RECORDS

(a) Except as provided by Rules .0402, .0404, .0406, of this Section criminal history record information obtained from or through DCI, NCIC, or NLETS shall not be disseminated to anyone outside of those agencies eligible under Subchapter 4E Rule .0201(a) of this Chapter. Any agency assigned ~~an ORI number with a suffix of "P"~~ a limited access ORI shall not obtain criminal history record information. Any agency requesting criminal history record information which has not received an ORI pursuant to Subchapter 4E Rule .0201(a) of this Chapter should be denied access and referred to the SBI Assistant Director for DCI.

(b) Criminal history record information is available to eligible agency personnel only on a "need-to-know" or "right-to-know" basis as defined in Subchapter 4E Rule .0104 of this Chapter.

(c) The use or dissemination of computerized criminal history for unauthorized purposes will be in violation of this Rule and subject to the provisions of Subchapter 4G Rule .0102(k) and (l) of this Chapter.

(d) ~~Each criminal justice agency obtaining criminal history record information through DCI shall maintain a log of dissemination on all positive responses (indicating a criminal record) for a period of not less than one year from the date the record was obtained. The documentation log must contain the following information:~~

- ~~(1) date of inquiry;~~
- ~~(2) name or initials of terminal operator;~~
- ~~(3) name or record subject;~~
- ~~(4) state identification number (SID) or FBI number of the record subject;~~
- ~~(5) message key used to obtain information;~~
- ~~(6) purpose (actual need i.e.: criminal investigation, taxi cab permit, etc.);~~
- ~~(7) name of person requesting information; and~~
- ~~(8) name of secondary dissemination, if any.~~

DCI shall maintain an automated log of CCH/CHRI inquiries for a period of not less than 1 year from the date of inquiry. The automated log will contain the following information as supplied by the operator on the inquiry screen and will be made available on-line to the inquiring agency;

- (1) date of inquiry;
- (2) name or record subject;
- (3) state identification number (SID) or FBI number of the record subject;
- (4) message key used to obtain information;
- (5) purpose code;
- (6) operators initials;
- (7) (Attention field) name of person and agency requesting information who is the initial user of the record, and if applicable;
- (8) (Attention 2 field) name of person and agency requesting information who is outside of the initial user agency.

~~(c) Dissemination logs shall be available for audit or inspection by the SBI Assistant Director for DCI or his designee at such time as they may require, as provided in Section .0800, Rule .0801 of this Subchapter. Criminal justice agencies making secondary disseminations of CCH/CHRI obtained through DCI shall maintain a log of the dissemination in a case file or other appropriate medium. This log must identify the name of the recipient and their agency.~~

~~(f) Direct or indirect access agencies with a DCI terminal responding to an out-of-state request for criminal history record information through NLETS shall only respond with criminal history record information received within their jurisdiction and maintained in their files. Out-of-state agencies requesting a statewide criminal record check should be directed to use the state automated file. It shall be the duty of each criminal justice agency obtaining criminal history~~

record information through DCI to conduct a monthly audit of their automated CCH log as provided by DCI.

- (1) This audit should include but is not limited to a review for unauthorized inquiries and disseminations, improper use of agency ORI's, agency names, and purpose codes.
 - (2) Printouts of the DCI automated CCH log must be signed or initialed by a designated representative and dated indicating a monthly review has occurred. These logs must be maintained on file for 1 year from the date of the inquiry.
 - (3) Any misuse of possible violations of DCI policy must be reported to DCI.
- ~~(g) Agencies that fail (failure is defined as more than 10 percent deficient) to record all required data on the log of dissemination as required in Paragraph (d) of this Rule will be in violation of Subchapter 4G Rule .0102(m) of this Chapter. Printouts of DCI automated CCH logs and any secondary dissemination logs shall be available for audit or inspection by the SBI Assistant Director or DCI or his designate at such time as they may require as provided in 12 NCAC 4F .0801 of this subchapter.~~
- ~~(h) Agencies that fail (failure is defined as more than 10 percent deficient) to maintain a log of dissemination of "positive" criminal history record information obtained through DCI for a period of one year as required in Paragraph (d) of this Rule will be in violation of this Rule and subject to the provisions of Subchapter 4G Rule .0102(n) of this Chapter. Agencies that fail to comply with the provisions of 12 NCAC 4F .0401(d) will be in violation and subject to the sanctions of 12 NCAC 4G .0102(n).~~
- Agencies that fail to comply with the provisions of Subchapter 4F .0401 (e) and/or (f) will be in violation and subject to the sanctions of 12 NCAC 4G .0102(m).
- (i) Direct or indirect access agencies responding to an out of state request for criminal history record information through NLETS shall only respond with criminal history record information received within their jurisdiction and maintained in their files. Out of state agencies requesting a state wide criminal record check should be directed to use the state automated file.

Statutory Authority G.S. 114-10; 114-10.1.

SUBCHAPTER 4G - PENALTIES

AND ADMINISTRATIVE HEARINGS

SECTION .0100 - DEFINITIONS AND PENALTY PROVISIONS

.0102 PENALTY PROVISIONS

(a) Insecure location of DCI terminal pursuant to 12 NCAC 4F .0101 shall result in the following penalties:

- (1) First Offense - Agency Penalty (Warning) with conditions that the terminal be secured within 48 hours;
- (2) Second Offense - Agency Penalty (Reprimand) with conditions that the SBI Assistant Director for DCI and the agency head must establish an agreed time period within which the terminal can be secured and;
- (3) Third Offense - Agency Penalty (Suspension) resulting in suspended access to computerized criminal history and drivers history data until the terminal is secured.

(b) Uncertified operator pursuant to 12 NCAC 4E .0402 shall result in the following penalties:

- (1) First Offense - Agency Penalty (Reprimand);
- (2) Second Offense - Agency Penalty (Probation) and limited operational time;
- (3) Third Offense - Agency Penalty (Suspend Services) with full service removed for six months from the date of the hearing and probation extended for one year from date of reinstatement and;
- (4) Fourth Offense - Agency Penalty (Suspend Services) resulting in the removal of the terminal.

(c) Unauthorized use of a DCI certified operator identifier pursuant to 12 NCAC 4E .0402 shall result in the following penalty:

First Offense - Individual Penalty (Revocation) and/or seek criminal prosecution under any applicable state or federal law for unauthorized access to a computer system.

(d) Transmission of non-criminal justice related information over a DCI terminal pursuant to 12 NCAC 4F .0102 shall result in the following penalties:

- (1) First Offense - Individual Penalty (Warning);
- (2) Second Offense - Individual Penalty (Probation) and Agency Penalty (Warning) if on same operator;
- (3) Third Offense - Individual Penalty

(Suspended Certification) and Agency Penalty (Reprimand) if on the same operator as a second offense and;

- (4) Fourth Offense - Individual Penalty (Revocation) and Agency Penalty (Probation) if on the same operator as a third offense.

(e) Failure by the original servicing agency (agency with direct access) to comply with the penalties that are placed upon the non-terminal (indirect access) agency pursuant to 12 NCAC 4E .0203 shall result in the following penalty:

First and Subsequent Offenses - The servicing agency (agency providing direct access) will receive the same penalty that should have been imposed upon the non-terminal (indirect access) agency.

(f) Dissemination of driver's history by a certified operator to an unauthorized requestor pursuant to 12 NCAC 4F .0701 shall result in the following penalties:

- (1) First Offense - Individual Penalty (Probation);
- (2) Second Offense - Individual Penalty (Suspension) and Agency Penalty (Warning) and;
- (3) Third Offense - Individual Penalty (Revocation).

(g) Unauthorized use of driver's history by authorized personnel other than a certified operator pursuant to 12 NCAC 4F .0701 shall result in the following penalties:

- (1) First Offense - Agency Penalty (Warning) with the agency submitting a written response to the SBI/DCI of a plan and date by which departmental training is complete to prevent further violations of this Rule;
- (2) Second Offense - Agency Penalty (Reprimand) and;
- (3) Third Offense - Agency Penalty (Suspension) of driver's history for six months.

(h) Failure (if entire agency is more than 10 percent deficient) to maintain a log of dissemination on "positive" driver's histories obtained through DCI for a period of one year from the date the record was received pursuant to 12 NCAC 4F .0701 shall result in the following penalties:

- (1) First Offense - Individual Penalty (Warning) to each operator that contributed with a re-audit after 90 days;
- (2) Second Offense - Individual Penalty

(Probation) and Agency Penalty (Warning);

- (3) Third Offense - Individual Penalty (Suspension of Certification) and Agency Penalty (Reprimand) and;
- (4) Fourth Offense - Individual Penalty (Revocation) and Agency Penalty (Probation).

(i) Failure to utilize the proper CCH message key in accessing III whether or not resulting in an unauthorized dissemination pursuant to 12 NCAC 4F .0401, .0402, .0404, .0405, and .0407 shall result in the following penalties:

- (1) First Offense - Individual Penalty (Warning) with condition of agency re-audit after 90 days;
- (2) Second Offense - Individual Penalty (Probation) with the agency submitting a written response to the SBI/DCI of a plan and date by which training is complete to prevent further violations of this Rule;
- (3) Third Offense - Individual Penalty (Suspension of Certification) and Agency Penalty (Reprimand) and;
- (4) Fourth Offense - Individual Penalty (Revocation).

(j) Improper use of CCH data in denial or revocation of a license or permit pursuant to 12 NCAC 4F .0406 shall result in the following penalties:

- (1) First Offense - Agency Penalty (Reprimand);
- (2) Second Offense - Agency Penalty (Probation);
- (3) Third Offense - Agency Penalty (Suspension of Services) with access suspended to computerized criminal history non-criminal justice purposes for a period of six months and;
- (4) Fourth Offense - Agency Penalty (Suspension of Services) with access suspended to computerized criminal history non-criminal justice purposes for one year. After one year of suspension the agency must seek reinstatement by appearing before the Advisory Policy Board.

(k) Dissemination of CCH by a certified operator for an unauthorized purpose or to an unauthorized requestor pursuant to 12 NCAC 4E .0203; 4F .0401, .0404, .0405, and .0407 shall result in the following penalties:

- (1) First Offense - Individual Penalty (Probation);

- (2) Second Offense - Individual Penalty (Suspension of Certification) and Agency Penalty (Warning) and;
- (3) Third Offense - Individual Penalty (Revocation).

(l) Unauthorized use or dissemination of CCH by authorized personnel other than the certified operator pursuant to 12 NCAC 4F .0401, .0404, .0405, and .0407 shall result in the following penalties:

- (1) First Offense - Agency Penalty (Reprimand) with the agency submitting a written response to the SBI/DCI of a plan and date by which training is complete to prevent further violations of this Rule with a re-audit to be conducted 90 days after training is complete;
- (2) Second Offense - Agency Penalty (Suspension) of CCH services for a period of 90 days and;
- (3) Third Offense - Agency Penalty (Suspension) of CCH services for a period of six months.

(m) ~~Failure (if the entire agency is more than 10 percent deficient) to log all of the required fields on the CCH dissemination log pursuant to 12 NCAC 4F .0401 shall result in the following penalties:~~

- ~~(1) First Offense - Individual Penalty (Warning) with a re-audit after 90 days;~~
- ~~(2) Second Offense - Individual Penalty (Probation) and Agency Penalty (Warning);~~
- ~~(3) Third Offense - Individual Penalty (Suspension of Certification) and Agency Penalty (Reprimand) and;~~
- ~~(4) Fourth Offense - Agency Penalty (Probation)~~

(m) ~~Failure to maintain and/or audit the DCI automated CCH log or a log of secondary dissemination pursuant to 12 NCAC 4F .0401 (e) or (f) shall result in the following penalties:~~

- (1) First Offense : Agency Penalty (Warning);
- (2) Second Offense : Agency Penalty (Reprimand);
- (3) Third Offense : Agency Penalty (Probation);
- (4) Fourth Offense : Agency Penalty (Suspension of Service).

(n) ~~Failure (if the entire agency is more than 10 percent deficient) to maintain a log of dissemination on "positive" criminal history record information obtained through DCI for a period of~~

~~one year from the date the record was received of the operator to properly fill out a CCH/CHRI inquiry screen pursuant to 12 NCAC 4F .0401 shall result in the following penalties:~~

- (1) First Offense - Individual Penalty (Warning) to each operator that contributed and an Agency Penalty (Warning) with condition of and provisions authorizing an agency re-audit after 90 days;
- (2) Second Offense - Individual Penalty (Probation) and an Agency Penalty (Reprimand) with the agency head submitting a letter to DCI on a monthly basis (for 12 consecutive months) verifying that a self-audit has been conducted. Failure to submit this verification letter will be considered a breach of the users agreement and; with the condition that the agency submit a written response to the SBI/DCI of a plan and date by which training is complete to prevent further violations of this Rule;
- (3) Third Offense - Individual Penalty (Suspension of Certification) and an Agency Penalty (Suspension of Services) suspending CCH for six months. (Reprimand) and; Fourth Offense - Individual Penalty (Revocation).

(o) Failure of the agency maintaining management control over the certified operator to notify SBI/DCI of the employee's resignation or termination of employment pursuant to 12 NCAC 4E .0402(g):

- (1) First Offense - Agency Penalty (Warning) with condition of agency reaudit after 90 days;
- (2) Second Offense - Agency Penalty (Reprimand) with condition of agency reaudit after 90 days;
- (3) Third Offense - Agency Penalty (Probation) and;
- (4) Fourth Offense - Agency Penalty (Suspended Service).

Statutory Authority G.S. 114-10; 114-10.1.

TITLE 16 - DEPARTMENT OF PUBLIC EDUCATION

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Board of Education intends to amend rules cited as 16 NCAC 6D .0101 and .0103.

The proposed effective date of this action is July 1, 1995.

The public hearing will be conducted at 9:30 a.m. on August 15, 1994 at the Education Building, 301 N. Wilmington Street, Room 224, Raleigh, NC 27601-2825.

Reason for Proposed Action:

16 NCAC 6D .0101 - Amendment simplifies language in definitions.

16 NCAC 6D .0103 - Amendment replaces competency test with more challenging measure of student performance.

Comment Procedures: *Any interested person may present comments orally at the hearing or in writing prior to or at the hearing. Comments will be accepted thru August 15, 1994.*

**CHAPTER 6 - ELEMENTARY AND
SECONDARY EDUCATION**

SUBCHAPTER 6D - INSTRUCTION

SECTION .0100 - CURRICULUM

.0101 DEFINITIONS

As used in this Subchapter:

- (1) "Competency goals" means broad statements of general direction or purpose.
- (2) "Course unit" means at least 150 clock hours of instruction. LEAs may award credit for short courses in an amount corresponding to the fractional part of a total unit.
- (3) "Curriculum guide" means a document prepared by the Department for each subject or area of study listed in the standard course of study and many commonly offered electives, including competency goals, objectives and suggested measures.
- (4) "Diploma" means that document by which the LEA certifies that a student has satisfactorily completed all ~~state and local course requirements and has passed the North Carolina Competency Test SBE graduation requirements as set out in Rule .0103 of this Section and all local course requirements.~~
- (5) "Graduation" means satisfactory comple-

~~tion of all state and local course requirements and achievement of a passing score on the North Carolina Competency Test SBE graduation requirements as set out in Rule .0103 of this Section and all local course requirements.~~

- (6) "Measures" means a variety of suggestions for ways in which the student may demonstrate ability to meet an objective.
- (7) "Objective" means a specific statement of what the student will know or be able to do.
- (8) "Proper test administration" means administration of tests adopted by the SBE for students, in accordance with Section .0300 of this Subchapter.
- (9) "Special education student" means a student enrolled in or eligible for participation in a special education program.
- (10) "Standard course of study" means the program of course work which must be available to all public school students in the state.
- (11) "Transcript" means that document which provides a record of:
 - (a) All courses completed and grades earned;
 - (b) scores achieved on standardized tests; and
 - (c) participation in special programs or any other matter determined by the LEA.

Statutory Authority G.S. 115C-81.

.0103 GRADUATION REQUIREMENTS

(a) In order to graduate and receive a high school diploma, public school students who first enter the ninth grade in or after the 1995-96 school year must meet the requirements of Paragraph (b) of this Rule and attain passing scores on ~~competency tests adopted by the SBE and administered by the LEA.~~ the end-of-course test in core standard course of study courses (Algebra I, Biology, Economic/Legal/Political Systems, English I, physical science, and U.S. History). Students who satisfy all state and local graduation requirements but who fail ~~the competency tests to attain passing scores on the end-of-course test for each core standard course of study course~~ will receive a certificate of attendance and transcript and shall be allowed by the LEA to participate in graduation exercises.

- (1) ~~LEAs score the competency tests separately according to passing scores or criterion levels approved by the SBE.~~

- (2) ~~LEAs may change the form or content of the competency tests where necessary to allow special education students to participate, but these students must achieve a level of performance on each test equal to the passing scores or criteria levels.~~
- (3) ~~Special education students may apply in writing to be exempted from taking the competency tests. Before it approves the request, the LEA must assure that the parents, or the child if aged 18 or older, understand that each student must pass the competency tests to receive a high school diploma.~~
- (4) ~~Any student who has failed to pass the competency tests by the end of the last school month of the year in which the student's class graduates may receive additional remedial instruction and continue to take the competency tests during regularly scheduled testing until the student reaches maximum school age.~~
- (b) In addition to the requirements of Paragraph (a), students must successfully complete 20 course units in grades 9-12 as specified in this Paragraph:
- (1) Effective with the class entering ninth grade for the 1992-93 school year, the 20 course units must include:
 - (A) four units in English;
 - (B) three units in mathematics, one of which must be Algebra I;
 - (C) three units in social studies, one of which must be in government and economics, one in United States history and one in world studies;
 - (D) three units in science, one of which must be biology and one a physical science;
 - (E) one unit in physical education and health; and
 - (F) six units designated by the LEA, which may be undesignated electives or courses designated from the standard course of study.
 - (2) LEAs may count successful completion of course work in the ninth grade at a school system which does not award course units in the ninth grade toward the requirements of this Rule.
 - (3) LEAs may count successful completion of course work in grades 9-12 at a summer school session toward the requirements of this Rule.

- (4) LEAs may count successful completion of course work in grades 9-12 at an off-campus institution toward the requirements of this Rule. No high school may approve enrollment in post-secondary institutions during the regular school year in excess of five percent of its enrollment in grades 10-12 except as allowed by the SBE. 23 NCAC 2C .0301 governs enrollment in community college institutions.

(c) Effective with the class entering ninth grade for the 1992-93 school year, special needs students as defined by G.S. 115C-109, excluding academically gifted, speech-language impaired, orthopedically impaired, other health impaired, and pregnant, who do not meet the requirements for a high school diploma will receive a graduation certificate and shall be allowed to participate in graduation exercises if they meet the following criteria:

- (1) successful completion of 20 course units by general subject area (4 English, 3 math, 3 science, 3 social studies, 1 health and physical education, and 6 local electives) under Paragraph (b) of this Rule. These students are not required to pass the specially designated courses such as Algebra 1, Biology or United States history;
- (2) completion of all IEP requirements.

Authority G.S. 115C-12(9)c.; 115C-81(a); 115C-180; N.C. Constitution, Article IX, Sec. 5.

TITLE 19A - DEPARTMENT OF TRANSPORTATION

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Division of Motor Vehicles intends to adopt rules cited as 19A NCAC 03D .0517 - .0552, which was published in the Register, Volume 9, Issue 4, page 276. The agency published notice on the subject matter.

The proposed effective date of this action is October 1, 1994.

Reason for Proposed Action: These Rules are proposed for adoption to implement the vehicle safety and emissions inspection program.

Comment Procedures: Written comments should

be directed Emily Lee, APA Coordinator, NCDOT, P.O. Box 25201, Raleigh, NC 27611, telephone (919) 733-2520. Comments must be received by August 15, 1994.

CHAPTER 3 - DIVISION OF MOTOR VEHICLES

SUBCHAPTER 3D - ENFORCEMENT SECTION

SECTION .0500 - GENERAL INFORMATION REGARDING SAFETY INSPECTION OF MOTOR VEHICLES

.0517 DEFINITIONS

For purposes of this Section, these words and phrases shall have the following meanings, except in those instances where the context clearly indicates a different meaning.

- (1) Abbreviations: Abbreviations used in these Rules shall have the following meanings:
 - (a) CO - Carbon Monoxide,
 - (b) G.V.W.R. - Gross Vehicle Weight Rating,
 - (c) HC - Hydrocarbons,
 - (d) PSI - Pounds Per Square Inch,
 - (e) NOx - Nitrogen Oxides,
 - (f) PPM - Parts Per Million,
 - (g) % - Percent,
- (2) Ambient Air: That portion of the atmosphere surrounding human, animal and plant life.
- (3) Authorized Station: An established place of business duly licensed by the North Carolina Division of Motor Vehicles to conduct inspection of safety equipment, exhaust emissions, and air pollution control devices as required by the inspection laws.
- (4) Base: The place where a vehicle is most frequently dispatched from, garaged, serviced, maintained, operated or otherwise controlled. If any vehicle is located in or operated from a county participating in the safety emission program continuously for a period of 30 days, said vehicle shall be considered based within said county.
- (5) Carbon Monoxide: (CO) A colorless, odorless, highly toxic gas that is a normal by-product of incomplete fuel combustion.

- (6) Certified Inspection Mechanic: A person who has completed the required course(s), who has passed a written examination approved by the North Carolina Division of Motor Vehicles, and who has been issued an inspection mechanic license by the Division of Motor Vehicles.
- (7) Crankcase Emissions: Air contaminants emitted into the atmosphere from any portion of the engine crankcase ventilation or lubrication system.
- (8) Current Year Model: The production period of new motor vehicles as designated by the manufacturer in the calendar year in which the period ends. If the manufacturer does not designate a production period, the model year shall mean the 12-month period beginning January of the year in which production began.
- (9) Diagnostic Equipment: Tools or machines used to diagnose engine performance.
- (10) Emission: The act of a motor vehicle emitting into the atmosphere any air contaminants which may include carbon monoxide, hydrocarbons, or nitrogen oxides.
- (11) Established Place of Business for Safety/Emissions Inspection: A permanent structure owned either in fee or leased by a licensee, which has sufficient space to test and inspect one or more motor vehicles for which an inspection sticker is being sought and to accommodate the office or offices of an authorized station to provide a safe place for maintaining the records and stickers of such authorized station, and at which location the business shall be open during normal business hours to conduct safety inspections and exhaust emissions tests and make available to authorized agents of the Division of Motor Vehicles all records and required equipment for examination and testing.
- (12) Exhaust Emissions: Air contaminants emitted into the atmosphere from any opening downstream from the exhaust parts of a motor vehicle engine.
- (13) Exhaust Gas Analyzer: A device for sensing and measuring the amount of air contaminants in the exhaust emitted from a motor vehicle.
- (14) Heavy Duty Motor Vehicle: A motor

- vehicle which is designed primarily for:
- (a) The transportation of property and which is rated at more than 8,500 GVWR.
 - (b) The transportation of persons and which has a capacity of more than 12 persons.
 - (c) Use as a recreational motor vehicle which is rated at more than 8,500 GVWR.
 - (d) Use as an off-road utility vehicle.
- (15) Hydrocarbons: A family of compounds containing carbon and hydrogen in various combinations found especially in fossil fuels.
- (16) Inspection: The safety equipment or exhaust emissions inspection of motor vehicles required by G.S. 20, Part 2, Article 3A.
- (17) Inspection Sticker: Sticker which when properly executed indicates that the vehicle to which it is attached has been inspected and found to meet the requirements of the inspection laws.
- (18) Inspection Laws: G.S. 20, Part 2, Article 3A and rules approved by the Governor and duly adopted by the Commissioner of Motor Vehicles.
- (19) Inspection/Maintenance (I/M): A strategy to reduce emissions from in-use motor vehicles by identifying vehicles that need emission related maintenance and requiring that such maintenance be performed.
- (20) Inspection Period: The month during which the motor vehicle would normally be required to be inspected by G.S. 20, Part 2, Article 3A.
- (21) License: Notwithstanding G.S. 20-4.01(17), the license issued by the Commissioner of Motor Vehicles which is required for a person to operate a safety equipment exhaust emission inspection station.
- (22) Light Duty Motor Vehicle: A motor vehicle which is designed primarily for:
- (a) Transportation of property and which is rated at or less than 8,500 GVWR by the manufacturer; or
 - (b) Use in the transportation of persons and which has a capacity of 12 persons or fewer.
- (23) Motor Vehicle: Every vehicle which is either self-propelled or designed to run upon the highways while being pulled by a self-propelled vehicle.
- (24) Nitrogen Oxides: A gas formed in great part from atmospheric nitrogen and oxygen when combustion occurs under high temperature and high pressure, as in an internal combustion engine.
- (25) Recreational Motor Vehicle: A vehicle which is designed primarily to provide temporary or permanent living quarters for travel, camping, or other recreational use.
- (26) Registered Owner of a Vehicle: The individual, group of individuals, partnership, firm, company, corporation, association, trust, estate, political subdivision, administrative agency, public or quasi-public corporation, or any other legal entity in whose name the license has been issued and whose name appears on the registration for such vehicle.
- (27) Revocation: Notwithstanding G.S. 20-4.01(36), the termination of a license issued by the Division of Motor Vehicles to a safety equipment exhaust emission inspection station.
- (28) Section: The Enforcement Section of the Division of Motor Vehicles.
- (29) Self-Inspector: A person, firm or corporation so designated by the Commissioner for the purpose of inspecting only those vehicles owned or operated by such person, firm or corporation.
- (30) Standard: A standard of performance adopted in these Rules.
- (31) Station: A place of business duly licensed by the Commissioner of Motor Vehicles to conduct inspections of motor vehicles as required by the inspection laws.
- (32) Suspension of Safety/Emission License: The temporary withdrawal of a license issued by the Division of Motor Vehicles to a safety equipment exhaust emission inspection station for a definite period of time.
- (33) Tampering: Rendering inoperative, or the intentional maladjustment of any device installed on a motor vehicle designed or intended to control the amount of emissions from a vehicle.
- (34) Waiver: A document issued by the Commissioner of Motor Vehicles or his designated agent exempting a particular motor vehicle from the requirements of the emission inspection.

Statutory Authority G.S. 20-2; 20-39.

.0518 LICENSING OF SAFETY OR EXHAUST EMISSIONS INSPECTION STATIONS

(a) An application for licensing as a Safety Equipment or Safety Equipment Exhaust Emissions Inspection Station shall be made on forms furnished by the Division of Motor Vehicles and filed with the Enforcement Section, Motor Vehicles Building, 1100 New Bern Avenue, Raleigh, North Carolina, 27697, telephone 919-733-0133.

(b) "Adequate facilities as to space" means:

- (1) The applicant shall have a specified area used primarily for repair of motor vehicles.
- (2) The applicant shall have at least 45 lineal feet of approximately level floor surface at least 10 feet wide when using a light chart for testing lights, or at least 25 lineal feet of approximately level floor surface at least 10 feet wide when using a light testing machine. Dirt floors are not acceptable.
- (3) Sufficient area enclosed to permit a thorough inspection at all times regardless of weather conditions. Trailers may be inspected outside of the enclosed area as long as attached to prime mover.
- (4) If a light chart is used to check lights, parallel lines at least 3 feet long painted on floor surface 25 feet from the chart.

Statutory Authority G.S. 20-2; 20-39.

.0519 STATIONS

(a) Licensed stations shall be kept clean to prevent accidents and all vehicles shall remain in the inspection area during the entire inspection.

(b) Stations with only a 25 foot lineal inspection lane shall not inspect trucks or other vehicles exceeding that length.

(c) Stations with mechanical aimers shall not inspect vehicles with headlamps that were not manufactured to be aimed with this device. These headlamps were manufactured to be aimed with photoelectric eyes, wall charts, computerized headlight test equipment, or on-board headlight aiming devices.

(d) Stations not equipped with an exhaust emission analyzer shall not inspect vehicles which are 1975 or newer gasoline powered motor vehicles registered or based in counties designated as non-attainment for air quality standards by either the North Carolina Department of

Environment, Health, & Natural Resources (N.C. DEHNR) or U.S. Environmental Protection Agency (U.S. EPA). However, they are permitted to perform the original safety equipment inspections on new vehicles, vehicles 1974 model year or older, diesel powered vehicles, motorcycles and trailers.

(e) Each station shall have equipment and tools for the carrying out of inspections, which include but are not limited to the following:

- (1) 1 jack or lift with minimum capacity of 2 tons.
- (2) 1 headlight tester or aiming kit adapters to fit all headlights.
- (3) 1 workbench.
- (4) 1 creeper.
- (5) 1 hand paper punch (round, 1/4" cut).
- (6) 1 tire tread depth gauge (calibrated in 32nds of an inch).
- (7) 1 Emission Control System Application Manual (current edition issued by N.C. DEHNR).
- (8) 1 Exhaust Emission Analyzer.
- (9) 1 Active telephone line with jack.

Statutory Authority G.S. 20-2; 20-39.

.0520 INSPECTION STATION PERSONNEL

Each licensed inspection station shall have a certified inspection mechanic employed at all times. The license holder shall be responsible for the acts of the inspection mechanic. All personnel of each inspection station and each self-inspector who conducts inspections as contemplated by these Rules must meet the following requirements:

- (1) Be of good character and have a good reputation for honesty;
- (2) Have knowledge of the safety equipment or safety equipment exhaust emission requirements as cited in G.S. 20-124 through 20-129;
- (3) Be able to conduct a safety equipment or safety equipment exhaust emission inspection as required by the inspection laws;
- (4) Have a general knowledge of motor vehicles to be able to recognize any unsafe mechanical condition;
- (5) Have a valid drivers license;
- (6) Satisfactorily complete training and examinations as prescribed in 19A NCAC 03D .0522(c);
- (7) Be certified by the Division upon the condition that he or she meets the requirements as set out in this Section.

Statutory Authority G.S. 20-2; 20-39.

0521 MECHANIC REQUIREMENTS

(a) An applicant and licensee shall certify that each inspector meets the requirements as set out in this Section.

(b) At reasonable times, a certified inspection mechanic may be required by authorized law enforcement officers of the Division to demonstrate proficiency and knowledge pertaining to the Safety Equipment or Safety Equipment Exhaust Emission inspection requirements which include completion of an actual or simulated Safety Equipment or Safety Equipment Exhaust Emission inspection in the presence of any such authorized officer.

Statutory Authority G.S. 20-2; 20-39.

0522 LICENSING REQUIREMENTS

(a) The Commissioner may, upon application, designate the State of North Carolina, any political subdivision thereof, or any person, firm, or corporation as a self-inspector provided applicant meets the requirements of the rules in this Section and owns or operates and inspects a minimum of 10 motor vehicles. These self inspector applicants must meet all equipment requirements for the license for which applied.

(b) No application for appointment as a safety equipment or safety equipment exhaust emissions inspection station or self-inspector shall be approved unless the requirements are met as set out in this Section.

(c) To become a North Carolina Safety Inspector, an individual must attend and pass an eight-hour Safety Inspection Course offered by a North Carolina Community College. An individual must pass a written examination with a score of no less than 80% correct answers. An additional eight-hour Emissions Inspection course is required if the individual desires to be certified as an Emissions Inspector. The inspection mechanic license must be renewed every four years prior to the month of license expiration. This certification process requires that a person have the ability to read and write. No oral exams shall be given as allowed in CFR 51 Part 40.

(d) Based upon the application and the results of investigations made, each applicant shall be approved or disapproved for licensing. Each applicant approved shall be notified by mail and furnished without charge the appropriate station license and inspection mechanic certification for each person certified to conduct inspections. Such

license and inspection mechanic's certifications shall be for the place of business set forth in the application. Licenses and inspection mechanic certifications shall not be assignable and shall be valid only for the persons in whose name they are issued and for transaction of business only at the place designated therein.

(e) No Safety Inspection Station shall inspect any gasoline powered vehicle of a 1975 model year or newer excluding the initial year model if the vehicle is registered or based in a county participating in the exhaust emission inspection program unless the station has an exhaust emission analyzer and has been approved as specified in 19A NCAC 03D .0519(e)(8) to conduct exhaust emissions inspections by the Division of Motor Vehicles. Owners of vehicles registered in a county participating in the exhaust emission program but based and operated outside the county may request in writing on forms furnished by the division an exemption from the exhaust emission inspection. When an approved exhaust emission request for exemption is presented, Safety Inspections stations may conduct the safety equipment inspection in the regular manner. Vehicles exempted from exhaust emission inspection because they are based outside of the county participating in the exhaust emission program must have a copy of the approved exemption form in the vehicle at all times.

Statutory Authority G.S. 20-2; 20-39; 20-183.3.

.0523 DENIAL, SUSPENSION OR REVOCATION OF LICENSES

(a) Denial of License: The Commissioner shall deny the application of any applicant for a Safety Equipment or Safety Equipment Exhaust Emissions Inspection Station License who fails to meet the qualifications set out in G.S. 20, Part 2, Article 3A or the rules in this Section. Applicants disapproved for licensing shall be notified by mail as soon as is practicable. An application received with fraudulent or fictitious information shall be denied. Persons who are denied a license shall be allowed a hearing in accordance with G.S. 20-183.8E.

(b) Suspension or Revocation of License:

(1) The license of any inspection station violating the Rules in this Section or G.S. 20, Part 2, Article 3A shall be subject to suspension or revocation. The license of any inspection station shall be subject to suspension or revocation at any time when any of its

personnel conducting inspections do not meet the rules in this Section. Any person, firm, or corporation whose license is suspended or revoked shall immediately surrender all unused inspection stickers to the Division of Motor Vehicles and no such licensee shall inspect vehicles while its license is suspended or revoked. Every licensee whose license is suspended or revoked or who is assessed a civil penalty or who receives a warning letter from the Division shall be allowed a hearing in accordance with G.S. 20-183.8E.

(2) Prior to the reinstatement of license of any Safety Equipment or Safety Equipment Exhaust Emissions Inspection Station License which has, by order of the Commissioner, been revoked or suspended, the applicant shall demonstrate to the satisfaction of the Commissioner or his duly authorized agent that its employees have adequate knowledge of the safety equipment or safety equipment exhaust emission inspection procedures and requirements described in these rules in this Section and that the location is mechanically equipped to carry out proper inspections. Prior to the reinstatement of any Inspection Mechanic License which has, by order of the Commissioner, been revoked or suspended, the applicant shall attend a training session in Safety Equipment or Safety Equipment Exhaust Emission Inspection. Proof of course attendance and passing a written test must be presented to a Division of Motor Vehicles representative. Any inspection mechanic who has been inactive for a period of one year or more must be recertified by completing the required training.

(3) Motorists assessed civil penalties or fines shall be allowed a hearing in accordance with G.S. 20-183.8E. Motorists requesting a hearing shall mail a written hearing request to the Commissioner of Motor Vehicles, 1100 New Bern Avenue, Raleigh, NC 27697.

Statutory Authority G.S. 20-2; 20-39.

.0524 OPERATION OF SAFETY OR

EXHAUST EMISSIONS INSPECTION STATIONS

(a) Posting information:

(1) Each station shall display in a conspicuous place the following:

(A) Official Safety Equipment or Safety Equipment Exhaust Emissions Inspection Procedure Poster;

(B) Safety Equipment or Safety Equipment Exhaust Emissions Inspection Station License;

(C) All inspection mechanic certifications issued by North Carolina Division of Motor Vehicles;

(D) On the outside of its building or immediately adjacent thereto a sign in block letters at least four inches in height bearing the words: OFFICIAL INSPECTION STATION.

(2) Station license and inspection mechanic certification(s) shall be posted in a frame under glass.

(A) If any certified inspection mechanic leaves the employment of a safety equipment station, the inspection mechanic's license shall be forwarded to the Division by the station along with the next regular monthly report.

(B) If any certified inspection mechanic leaves the employment of a safety equipment exhaust emission station, the license shall be retained and given to the DMV Inspector at the next quarterly audit.

(b) Periodic Requirements for Certified Inspection Mechanic. At reasonable times, certified inspection mechanics may be periodically required by authorized law enforcement officers of the Division to demonstrate knowledge pertaining to the Safety Equipment or Safety Equipment Exhaust Emissions inspections in the presence of any such authorized officer.

(c) Location. Inspections shall be conducted only at the location shown on the inspection station's license and only in the designated inspection area. Trailers may be inspected outside of inspection area as long as they are attached to the engine unit.

(d) Vehicle presented to be inspected. Each station shall inspect any vehicle presented for inspection according to the year model, and type of engine except as provided in this Section or when exempted from the emissions inspection by a waiver issued by the Commissioner of Motor Vehicles or his designated agent.

(e) Repairs. Inspection stations shall not in any manner attempt to require owners or operators of disapproved vehicles to have the vehicles repaired at the inspection station. The repairs necessary for approval may be made at any place chosen by the

owner or operator of the vehicle. Permission must be obtained before making any repairs or adjustments. Requiring unnecessary repairs is prohibited.

(f) Hours of operation. Each licensed public station must be open for at least eight normal business hours, five days per week. Official State holidays are excepted. A licensed inspection mechanic shall be on duty to conduct inspections during the hours specified.

Statutory Authority G.S. 20-2; 20-39.

0525 INSPECTION STICKERS

(a) Acquisition:

- (1) Licensed safety equipment or safety equipment exhaust emission inspection stations and self-inspectors shall procure stickers from the Division of Motor Vehicles and from no other source.
- (2) Orders for stickers shall be placed with a local agent of the Enforcement Section. Requests for stickers shall be accompanied by proper remittance. For safety equipment inspection stickers the amount of one dollar (\$1.00) per sticker shall be required. For safety equipment exhaust emission stickers, two dollars and forty cents (\$2.40) per sticker shall be required. Orders for windshield stickers shall be placed in units of 50. Orders for motorcycles/trailers and non-windshield safety equipment exhaust emission inspection stickers shall be placed in units of ten. Safety Equipment or Safety Equipment Exhaust Emission Windshield Inspection Stickers shall be issued in books of 50.
- (3) Orders placed in person at the local office of the Enforcement Section shall be accompanied by written authorization from the station to which the stickers are to be issued, upon forms furnished by the Division, if the order is placed by other than the person in whose name the station is licensed.
- (4) All licensed stations shall keep inspection stickers and numeral inserts on hand at all times.
- (5) Licensed inspection stations and self-inspectors shall, upon request, be furnished forms required to be used by the rules in this Section. DMV Enforcement shall furnish forms to licensed inspection stations and self-inspectors.

(b) Application:

- (1) The inspection sticker shall be affixed only to vehicles inspected and approved in accordance with these Rules and G.S. 20, Article 3A, Part 2. Stickers must be affixed to approved vehicles within the inspection area of the inspection station by the person conducting the inspection. The number of the sticker shall be recorded on the receipt and statement. No person shall furnish, give, lend, or sell to any owner or operator of a motor vehicle or to any other person, or place in or on any vehicle an inspection sticker unless such vehicle has been inspected and approved in accordance with these Rules and G.S. 20, Article 3A, Part 2.
- (2) When any motor vehicle to be inspected under the Safety Equipment Act bears a prior inspection sticker, such prior inspection sticker may not be removed from the vehicle until such vehicle has passed inspection, is approved, and is ready to have the new sticker affixed. If the vehicle being inspected is rejected, the old sticker is to remain affixed until the defects causing rejection have been corrected and the vehicle has been reinspected and approved. Every licensed inspection mechanic upon approving any motor vehicle shall remove the prior inspection sticker before affixing the new inspection sticker.
- (3) An inspection sticker shall be placed upon the approved vehicle on the inside of the windshield at the bottom of the left side so that the left edge of the sticker is no more than one inch from the left edge of the windshield. For vehicles without windshields the motorcycle/trailer or non-windshield safety equipment or safety equipment exhaust emission sticker shall be used. The sticker shall be placed on the left side of the vehicle as near as possible to the front. Prior to affixing the windshield type sticker the inspection mechanic shall attach to the sticker the appropriate numeral inserts indicating the month and year of expiration. The inspection mechanic shall enter on the

sticker in the appropriate spaces the date of inspection, the odometer mileage as taken from the vehicle at the time inspection is performed, the inspection mechanic's name, and the inspection station's license number. This information shall be entered on the windshield type inspection sticker with a ball point pen or a laundry marking pen. Glass/plastic windshields require a platform to prevent damage to the windshield. The inspection sticker shall be affixed to the platform; when the sticker is removed from the windshield it shall no longer be valid. Prior to affixing the motorcycle/trailer or non-windshield safety/emission sticker the inspection mechanic must punch the inspection sticker with a 1/4 inch punch indicating the month inspection performed and year of expiration.

- (4) All safety equipment or safety equipment exhaust emission inspection stations shall be issued two types of stickers. The stickers shall be of different color and shall be affixed to the proper vehicle according to the type of inspection required.

- (5) The following tables indicate month and year of inspection:

Month Number Inserts:

1 vehicle inspected in January
2 vehicle inspected in February
3 vehicle inspected in March
4 vehicle inspected in April
5 vehicle inspected in May
6 vehicle inspected in June
7 vehicle inspected in July
8 vehicle inspected in August
9 vehicle inspected in September
10 vehicle inspected in October
11 vehicle inspected in November
12 vehicle inspected in December

Year Number Inserts:

95 vehicle inspected in 1994
96 vehicle inspected in 1995
97 vehicle inspected in 1996
98 vehicle inspected in 1997
99 vehicle inspected in 1998
00 vehicle inspected in 1999
01 vehicle inspected in 2000
02 vehicle inspected in 2001
03 vehicle inspected in 2002
04 vehicle inspected in 2003
05 vehicle inspected in 2004
06 vehicle inspected in 2005

(c) Control:

- (1) Licensed inspection stations and self-inspectors are strictly accountable for inspection stickers in their possession. Any licensed inspection station losing or not accounting for any inspection sticker shall be subject to revocation or suspension of inspection station license as provided by these Rules. Stickers shall be locked in a safe place to guard against loss or theft.
- (2) Upon discovery of a loss or theft of any inspection stickers, station owners and self-inspectors must as soon as practicable report such loss or theft to the Enforcement Section, Motor Vehicles Building, 1100 New Bern Avenue, Raleigh, North Carolina, 27697. Oral reports shall be made upon discovery of loss or theft by the quickest means available to the local Enforcement Section Inspector.
- (3) Inspection stations and self-inspectors shall not furnish, give, loan or sell inspection stickers to any other licensed inspection station or self-inspector.
- (4) Inspection stickers shall not be transferred or reissued. They shall only be affixed to the vehicle as designated on the receipt and statement, and only when a complete inspection of the vehicle confirms it meets requirements for approval.
- (5) Each inspection station and self-inspector shall protect stickers from larceny or damage. No refund shall be allowed for stolen, soiled, lost, or torn stickers and the count of the Division for returned stickers shall be accepted as final. All unused stickers must be accounted for. A refund shall be made for expired motorcycle/trailer stickers. A request for refund along with unused stickers must be mailed to the Enforcement Section, Division of Motor Vehicles, 1100 New Bern Avenue, Raleigh, North Carolina, 27697, between January 1st and January 31st of the following year. Refunds shall not be permitted for expired stickers postmarked after January 31st. Unused stickers for which a refund is not requested must be retained in a safe place until audited and destroyed by an agent of the Enforcement Section.
- (6) All inspection supplies, unused stickers, copies of receipts and statements pertaining to the issuance of stickers, all bulletins and all forms issued by the Division of Motor Vehicles pursuant to the carrying out of the Motor Vehicle Inspection Program are the property of the Division of Motor Vehicles and shall be treated as such by any inspection station. Upon suspension or revocation of any safety equipment or safety equipment exhaust emission inspection station license or whenever

any licensee voluntarily surrenders such license or ceases to do business, all items held by such licensee in carrying out the inspection shall be surrendered to the Division of Motor Vehicles. Such items shall be inventoried by the designated agent of the Division of Motor Vehicles and shall be receipted upon surrender. Refunds for unused stickers shall be made by check from the Division of Motor Vehicles in Raleigh.

(d) Requirement of records:

- (1) Monthly report forms. Each licensed safety equipment inspection station and each licensed safety equipment self-inspector shall maintain at the station a monthly inspection report sheet listing the beginning and ending numbers for each series of stickers issued for vehicles inspected upon forms furnished by the Division. A total of all defects and repairs and charges listed on the receipt and statements shall be recorded in the appropriate column of the monthly inspection report. This report shall be completed in duplicate and the original forwarded to the Enforcement Section, North Carolina Division of Motor Vehicles, monthly on or before the 10th of the month following the month for which it was completed. The second copy shall be retained by the station for a period of at least 18 months.
- (2) Receipt and statement. Licensed Safety Equipment or Safety Equipment Exhaust Emission inspection stations shall furnish the operator of each vehicle inspected the original copy of the "Receipt and Statement" indicating that the vehicle has been inspected and indicating thereon the items approved or disapproved. The second copy shall be retained by the inspection station for at least 18 months following the inspection.
- (3) Records available. Each safety equipment or safety equipment exhaust emission inspection station shall maintain records required and such records shall be made available for inspection by any law enforcement officer, upon demand, during normal business hours.

Statutory Authority G.S. 20-2; 20-39.

.0526 PRE-INSPECTION REQUIREMENTS

Prior to performing an inspection, the inspection mechanic shall:

- (1) Have all occupants leave the vehicle.
- (2) Require the operator to produce the current registration card to the vehicle.
- (3) Print or write legibly, use a ball point pen, and list the license plate number, serial number, mileage, number of cylinders, make, year and other required information for the vehicle on the Receipt and Statement (Form No. SI-15) if the inspection is performed by the safety equipment inspection mechanic. If the vehicle does not have a license plate, "none" shall be indicated. If inspected for a dealership, the dealer sticker number shall be indicated.
- (4) Enter all information if the inspection is performed by the safety equipment exhaust emission inspection mechanic as requested by the analyzer.

Statutory Authority G.S. 20-2; 20-39.

.0527 SAFETY EQUIPMENT GRADING ITEMS

The authorized safety equipment inspection mechanic shall approve or disapprove each inspect-

ed item. The following requirements shall apply:

- (1) If the item inspected is approved, a check shall be placed in the appropriate block as indicated on the SI-15 form.
- (2) If the item inspected is not approved, an "X" shall be placed in the appropriate block as indicated on the SI-15 form.
- (3) If the disapproved item is corrected during inspection, the appropriate block in "corrected during inspection" shall be checked as indicated on the SI-15 form.

Statutory Authority G.S. 20-2; 20-39.

.0528 EXHAUST EMISSION CONTROLS TAMPERING CHECK

The authorized safety equipment exhaust emission inspection mechanic must approve or disapprove each inspected item. The following requirements as listed on the SI-15, which is the receipt and statement form, shall apply:

- (1) Not applicable : This block shall be checked if the vehicle inspected was not originally equipped with the emission control devices as listed.
- (2) Connected : This block shall be checked if the vehicle is equipped with the item and it is connected and in an operable condition.

- (3) Disconnected - This block shall be checked if the required emission equipment has been disconnected, removed or made inoperable.
- (4) Corrected - This block shall be checked if the emission equipment which was disconnected or inoperable is repaired or replaced.

Statutory Authority G.S. 20-2; 20-39.

.0529 SAFETY EQUIPMENT EXHAUST EMISSION INSPECTIONS

Safety equipment exhaust emission inspection mechanic shall enter the following information into the analyzer:

- (1) For those items which are inspected and approved, the letter "P" for passed shall be entered.
- (2) For those items which are inspected and disapproved, the letter "F" for failed shall be entered.
- (3) For those items which were disapproved and corrected, the letter "C" for corrected shall be entered.
- (4) For those items which do not apply to the vehicle inspected, the letter "N" for not applicable shall be entered.

Statutory Authority G.S. 20-2; 20-39.

.0530 CERTIFICATION

When the vehicle has been approved, the Inspection mechanic shall:

- (1) Prepare the appropriate sticker (safety equipment or safety equipment/exhaust emission) for affixing to the vehicle.
- (2) Remove the old inspection sticker from the windshield.
- (3) Follow the instructions on the "Inspection Sticker."
- (4) Place the "Inspection Sticker" on the inside of windshield at the bottom of the left side so that the edge of the sticker is no more than one inch from the left side of the windshield. Platforms are required for glass-plastic windshields.
- (5) For vehicles without windshields, issue motorcycle/trailer stickers or non-windshield safety/emission stickers. The sticker shall be placed on the left side of vehicle as near the front as possible.
- (6) List the total inspection repair charges made, if any, on the "Receipt and Statement" form along with the serial number

of the inspection sticker which was attached to the inspected vehicle. A Safety Equipment Exhaust Emission inspection mechanic must enter all required information into the analyzer as defined in 19A NCAC 03D .0519(e)(8).

- (7) Collect fees as described in G.S. 20-183.7.
- (8) Sign and give the original of the "Receipt and Statement" form to the operator or owner.

Statutory Authority G.S. 20-2; 20-39.

.0531 DISAPPROVAL

If a vehicle inspected is disapproved, the inspection mechanic at the end of the total inspection shall advise the owner or operator of the defect or defects found during the inspection. Repairs may only be made at the request of the owner/operator. Upon completion of authorized repairs, the inspection mechanic shall follow the certification process. If the owner or operator requests the repairs to be made at some other location, then the inspection mechanic conducting the inspection shall:

- (1) Complete the "Receipt and Statement" showing the vehicle was "disapproved" and signed by the inspection mechanic.
- (2) Collect fees as prescribed in G.S. 20-183.7.
- (3) After giving the owner or operator the original copy of the "Receipt and Statement" explain to the owner/operator he has 30 days to bring the vehicle back to the inspection station for reinspection at no charge when the vehicle was disapproved for either safety or emissions defects.

Statutory Authority G.S. 20-2; 20-39.

.0532 REINSPECTION

Payment of the inspection fee at the time of the original inspection by the owner or operator of a "disapproved" vehicle entitles the vehicle to reinspection, free of charge, by the initial inspection station. The following requirements apply:

- (1) If the reinspection is made on the same date of the initial inspection, only those items found to be defective on the initial inspection shall be reinspected. If the reinspection is made at any time following the date of the initial inspection, all items shall be reinspected.
- (2) If the vehicle is approved following

reinspection, the inspection mechanic shall check the appropriate block in the "Reinspected and Approved" column on the SI-15 (Receipt and Statement form), and indicate the date of reinspection. The inspection mechanic shall issue the correct "Inspection Sticker" and collect fees as prescribed in G.S. 20-183.7.

- (3) When a receipt is presented to the issuing inspection station, at any time within 90 days for safety equipment reinspection and 30 days for emission reinspection, the inspection station shall reinspect the motor vehicle free of any additional charge until approved. An additional fee of one dollar (\$1.00) or two dollars and forty cents (\$2.40) shall be collected for the proper sticker according to the type of inspection required.
- (4) The inspection deadline shall not be extended.

Statutory Authority G.S. 20-2; 20-39.

0533 BRAKES

No vehicle brakes shall be approved for an inspection sticker unless the items indicated below are inspected and found to meet the minimum requirements established in G.S. 20-124 and this rule.

- (1) Footbrakes shall not be approved if:
 - (a) When applying brakes to moving vehicle, braking force is not distributed evenly to all wheels originally equipped with brakes by the manufacturer. (The inspection mechanic must drive vehicle to make this test. The inspector may check the brakes while driving vehicle forward into the inspection area.)
 - (b) There is audible indication (metal on metal) that the brake lining is worn to the extent that it is no longer serviceable. (The wheel must be pulled and the brake lining examined when this occurs.)
 - (c) Pedal reserve is less than 1/3 of the total possible travel when the brakes are fully applied, or does not meet the manufacturer's specification for power brakes or air brakes.
 - (d) The reservoir of the master cylinder is not full. (Only brake fluid meeting SAE specifications for heavy duty hydraulic brake fluid shall be used when adding or changing brake fluid.)

- (e) There is a visible leakage or audible seepage in hydraulic, vacuum or air lines and cylinders, or visible cracked, chafed, worn, or weakened hoses.
 - (f) The vehicle has any part of the brake system removed or disconnected.
 - (g) The brake pedal moves slowly toward the toeboard (indicating fluid leakage) while pedal pressure is maintained for one minute.
 - (h) Failure of brake indicator lamp of the hydraulic brake light in the bulb check position in 1969 or newer models.
- (2) Inspection mechanics are not expected to remove wheels in order to inspect the brakes. (Except as provided in Sub-item (1)(b) of this Rule.) Inspection mechanic must raise vehicle to get beneath to check underside.
 - (3) Handbrakes (auxiliary, parking or holding) shall not be approved if:
 - (a) There is no lever reserve when the brake is fully applied.
 - (b) Cables are visibly frayed or frozen, or there are missing or defective cotter pins or broken or missing retracting springs or worn rods or couplings.
 - (c) The operating mechanism, when fully applied, fails to hold the brakes in the applied position without manual effort.
 - (d) When emergency or handbrakes are applied they fail to hold vehicle.

Statutory Authority G.S. 20-2; 20-39.

0534 LIGHTS

(a) Headlights shall conform to the requirements of G.S. 20-129(b) and (c). Headlights shall not be approved if:

- (1) There are not at least two headlamps (at least four on dual headlamp systems which require four units) on all self-propelled vehicles except that motorcycles and motor driven cycles need only one.
- (2) The lens produces other than a white or yellow light.
- (3) Any lens is cracked, broken, discolored, missing, or rotated away from the proper position, or any reflector is not clean and bright.
- (4) The high beam-low beam dimmer switch does not operate properly or the high beam indicator light does not burn on vehicles manufactured after January

1. 1956.

- (5) Lights can be moved easily by hand, due to a broken fender or loose support, or if a good ground is not made by the mounting.
- (6) Foreign materials (such as shields, half of lens painted) are placed on the head-lamp lens that interferes with light beam of lamp.
- (7) Lights are improperly aimed. (A light testing machine or light testing chart shall be used to determine this.)
- (8) Lights project a dazzling or glaring light when on low beam.

(b) Rear Lights shall conform to the requirements of G.S. 20-129(d). Taillights shall not be approved if:

- (1) All original equipped rear lamps or the equivalent are not in working order.
- (2) The lens is cracked, discolored, or of a color other than red.
- (3) They do not operate properly and project white light on the license plate.
- (4) They are not securely mounted.

(c) Stoplights shall conform to the requirements of G.S. 20-129(g). A stoplight shall not be approved if:

- (1) The lens is cracked, discolored or of a color other than red or amber. Minor cracks on lenses shall not lead to disapproval unless water is likely to short out the bulb.
- (2) It does not come on when pressure is applied to foot brake.
- (3) It is not securely mounted so as to project a light to the rear.

(d) Clearance lights and reflectors for certain buses, trucks, and trailers shall conform to the requirements of G.S. 20-129.1.

(e) Wreckers shall conform to the requirements of G.S. 20-130.2.

(f) Parking lights shall conform to the requirements of G.S. 20-134. A vehicle shall not be approved if parking lights are not working.

(g) Back-Up Lamps. Any motor vehicle may be equipped with not more than two back-up lamps either separately or in combination with other lamps but any such back-up lamp shall not be lighted when the motor vehicle is in a forward motion nor shall the back-up lamp emit any color other than white. A back-up lamp is not a mandatory requirement.

Statutory Authority G.S. 20-2; 20-39.

.0535 HORN

The horn shall not be approved if:

- (1) It will not emit a sound audible for a distance of at least 200 feet, or it emits an unusually loud or harsh sound. Original equipment in working order will meet these requirements.
- (2) It has frayed, broken, or missing wiring; if wiring harnesses are broken or missing; if horn button is not mounted securely and in a position which is easily accessible to the driver; or if the horn is not securely mounted to the motor vehicle.
- (3) Operation of the horn interferes with the operation of any other mechanism.
- (4) Vehicles equipped with sirens shall not be approved unless they are within the class listed in G.S. 20-125(b) as being authorized to carry a siren.

Statutory Authority G.S. 20-2; 20-39.

.0536 STEERING MECHANISM

(a) The inspection mechanic must raise vehicle to get beneath to check steering mechanism.

(b) The steering mechanism shall not be approved if:

- (1) With front wheels in straight ahead position there is more than three inches of free play in steering wheels up to 18 inches in diameter or more than four inches of free play in steering wheels over 18 inches in diameter. If vehicle is equipped with power steering, the engine must be operating.
- (2) Either front or rear springs are noticeably sagging or broken.
- (3) The front wheels or front end assembly is bent or twisted or bolts, nuts or rivets are loose or missing.
- (4) Power steering system shows visible leaks or the power steering belt is loose or worn.

Statutory Authority G.S. 20-2; 20-39.

.0537 WINDSHIELD WIPER

(a) If any vehicle is originally equipped by its manufacturer with wipers on both the right and left sides, both wipers shall be in good working order.

(b) Windshield wipers shall not be approved if:

- (1) The vehicle is not equipped with a windshield wiper or wipers, provided the vehicle has a windshield.
- (2) The wiper or wipers do not operate

freely.

- (3) The wiper controls are not so constructed and located that the driver may operate them.
- (4) The wiper or wipers are not adequate to clean rain, snow and other matter from the windshield.
- (5) Parts of blades or arms are missing or show evidence of damage.

Statutory Authority G.S. 20-2; 20-39.

0538 DIRECTIONAL SIGNALS

(a) G.S. 20-125.1 requires all vehicles except motorcycles beginning with the 1954 models to be equipped with turn signals.

(b) Vehicles required to have signals shall be inspected and disapproved if:

- (1) Signals are not present and of a type approved by the Commissioner as specified in G.S. 20-125.1. Original directional signals on vehicles manufactured after July 1, 1953, are considered to be of a type approved by the Commissioner.
- (2) All lights do not operate properly, or if any lenses are broken, missing, or do not fit properly.
- (3) Signal lens color is other than red or amber on the rear and other than white or amber on the front.
- (4) Lamps are not securely mounted or wiring and connections are not in good condition.
- (5) Signals are not visible from front or back due to faulty or damaged mounting or due to manner in which mounted.
- (6) Switch is not so located as to be convenient for the driver to operate and so that its operation does not interfere with operation of other mechanisms.

Statutory Authority G.S. 20-2; 20-39.

0539 TIRES

(a) A vehicle shall be disapproved if:

- (1) Any tire has cuts or snags that expose the cords.
- (2) Any tire has a visible bump, bulge, or knot apparently related to tread or sidewall separation or partial failure of the tire structure including bead area.
- (b) Tire depth shall be measured by a tread depth gauge which shall be of a type calibrated in

thirty-seconds of an inch. Readings shall be taken in two adjacent tread grooves of the tire around the circumference of the tire. Readings for a tire with a tread design that does not have two adjacent grooves near the center shall be taken at the center of the tire around the circumference of the tire. Each tire must be completely lifted from the ground for an inspection to be performed.

Statutory Authority G.S. 20-2; 20-39.

.0540 TIRES - DEFINITIONS

(a) Rim is a metal support for the tire or tire and tube assembly on the wheel. Tire beads are seated on the rim.

(b) Bead is that part of the tire which is shaped to fit the rim. The bead is made of high tensile steel wires wrapped and reinforced by the plies.

(c) Sidewall is that portion of the tire between tread and bead.

(d) Cord is made from textile, steel wire strands forming the plies or other structure of the tires.

(e) Ply is layers of rubber coated parallel cords forming the tire body.

(f) Tread is that portion of the tire that comes in contact with the road.

(g) Rib is the tread section running circumferentially around the tire.

(h) Groove is the space between two tread ribs. A tire shall not be approved if there is less than 2/32 inch tread at two or more locations around the circumference of the tire in two adjacent major tread grooves or if the tread wear indicators are in contact with the roadway at two or more locations around the circumference of the tire in two adjacent major tread grooves.

Statutory Authority G.S. 20-2; 20-39.

.0541 REAR VIEW MIRRORS

Rear view mirrors shall not be approved if:

- (1) Loosely mounted.
- (2) Forward vision of the device is obstructed by mirror assembly.
- (3) They do not provide a clear view of the highway to the rear.
- (4) Cracked, broken, have sharp edges or can not be cleaned such that rear vision is not obscured.
- (5) Very difficult to adjust or they will not maintain a set adjustment.
- (6) Bus, truck or truck-tractor with a GVWR of 10,001 pounds or more is not equipped with a rear vision mirror on each side.

- (7) Vehicles manufactured, assembled, or first sold after January 1, 1966 are not equipped with outside rear view mirrors on the driver's side.

Statutory Authority G.S. 20-2; 20-39.

.0542 EXHAUST EMISSION CONTROLS

(a) An exhaust emission shall not be approved if the vehicle is a 1968 year model or newer and any of the visible emission control devices placed thereon by the manufacturer are missing, disconnected, made inoperative or have been altered without approval of the Department of Environment, Health, and Natural Resources.

(b) If the unleaded gas restrictor has been altered or removed a new or reconditioned catalytic converter and unleaded gas restrictor must be replaced before the vehicle passes inspection.

(c) An exhaust system shall not be approved if:

- (1) The vehicle has no muffler.
- (2) The muffler, exhaust or tail pipes have leaking joints.
- (3) The exhaust or tail pipes have holes, leaking seams or leaking patches on muffler.

.0544 INSPECTION PROCEDURE FOR EMISSIONS EQUIPMENT

(a) In addition to the required safety inspection, all gasoline-powered motor vehicles which are registered or based in an exhaust emission county and which are 1975 model year or newer are required to have an exhaust emission test. This exhaust emission test is in addition to the safety inspection required in the rules in this Section and shall be administered as a part of the regular inspection only. The exhaust emission readings resulting from the test must be at or below the standards as set forth in Paragraph (e) of this Rule or a waiver must be issued by the Commissioner of Motor Vehicles or his designated agent. A current year model vehicle is not required to be inspected under the exhaust emission testing procedures. The current year model vehicle shall be subject to the exhaust emissions inspection if presented for reinspection at anytime after the original inspection. The approved emission equipment installed on a current year model shall be deemed to be adequate to meet the emission requirements. No person shall install, construct, or use any device or cause the installation, construction, or use of any device which conceals any exhaust emissions of a motor vehicle unless such installation of a device results in a reduction in the total amount of air contaminants released into the atmosphere and has been approved by the United States Environmental Protection Agency and the North Carolina Department of Environment, Health, and Natural Resources.

(b) Vehicles which are purchased in a non-exhaust emission county and which are to be based in an exhaust emission county, shall, within 10 days, be reinspected in compliance with the Safety Equipment Exhaust Emission requirements.

(c) The following requirements shall be adhered to by the license inspection station for calibration of the exhaust emission analyzer(s) used for state inspections. The requirements are:

- (1) Inspections shall be performed only with an analyzer and software which has been certified by N.C. DEHNR.
- (2) All certified analyzers shall automatically require the inspection mechanic to perform a self-calibration and leak test every three days. If the analyzer does not require a gas calibration/leak test every three days, no additional inspections shall be performed and the DMV Inspector shall be notified.
- (3) All analyzers must be equipped with two tanks of span gases in the following concentrations:
 - (A) 1.0% carbon monoxide, 6.0% carbon dioxide and 300 PPM Propane;

- (4) The tail pipe end is pinched.
- (5) The exhaust system is equipped with muffler cut-out or muffler by-pass.
- (6) Any part of the system passes through the passenger compartment.

Statutory Authority G.S. 20-2; 20-39.

.0543 EMISSIONS CONTROL DEVICE

It is unlawful to remove, disconnect, tamper with, or render inoperable any emissions control device equipped by the manufacturer of any motor vehicle as described in G.S. 20-183.3. These devices include:

- (1) Catalytic converter.
- (2) Unleaded gas restrictor.
- (3) Air pump system.
- (4) EGR valve.
- (5) PCV valve.
- (6) Thermostatic air cleaner.
- (7) Evaporative emission system.
- (8) Oxygen sensor.

Statutory Authority G.S. 20-2; 20-39.

- (B) 4.0% carbon monoxide, 12.0% carbon dioxide and 1200 PPM Propane.
- (4) All analyzer maintenance shall be performed according to the manufacturer's specifications and reported on a maintenance log which shall be maintained at each station. Items to be recorded include:
 - (A) all filter replacements;
 - (B) water trap service; and
 - (C) any replacement or repair of the probe or sample line.
- (5) Multi Point Calibration Requirements.
 - (A) In high-volume stations (those performing 5000 or more tests per year), analyzers shall undergo two point calibrations each operating day and shall continually compensate for changes in barometric pressure. Calibration shall be checked at least every four hours and the analyzer adjusted if the reading is more than 2% different from the span gas value. Each time the analyzer electronic or optical systems are repaired or replaced, a gas calibration shall be performed prior to returning the unit to service.
 - (B) In high-volume stations, monthly multi-point calibrations shall be performed. Low-volume stations shall perform multi-point calibrations every six months. The calibration curve shall be checked at 20%, 40%, 60%, and 80% of full scale and adjusted or repaired to meet specifications listed in 40 CFR Part 51, Appendix D(I)(b)(1) which is hereby incorporated by reference, including all subsequent editions. This publication is available upon request at no cost from DMV Enforcement, 1100 New Bern Avenue, Raleigh, NC 27697, telephone (919) 733-7872. The necessary additional calibration gas bottles need not be a permanent part of the analyzer, but the analyzer software must require the periodic multi-point calibration and the analyzer hardware must accept the calibration gas from an external source.
 - (C) Gas calibration shall be accomplished by introducing National Bureau of Standards traceable gases into the analyzer either through the calibration port or through the probe. Span gases utilized for calibration shall be within two percent of the required span points.
- (6) Requirements for keeping and submitting records are as follows:
 - (A) Copies of the "Receipt and Statement" shall be removed from the analyzer at the time of download and filed with other business records and kept in sequence for review by the DMV Inspector during his audit. These copies of the "Receipt and Statement" must be retained for 18 months.
 - (B) A monthly report shall be submitted electronically by the analyzer on the date and time specified by the Division. It is the station's responsibility to connect the analyzer to the proper telephone line and leave the machine properly powered for the telephone transmittal of records on the specified date and time each and every month. Failure to comply with this requirement may result in the suspension of the station license.
 - (C) Station owner(s) shall maintain the printer in a condition so that all copies of the Vehicle Inspection Receipt/Statement are clear and legible.
- (d) The procedures for inspection shall be as follows:
 - (1) The vehicle's engine must be at normal operating temperature, and all accessories must be off.
 - (2) The exhaust system from the engine manifold to the rear most portion of the tailpipe shall be examined to determine that the exhaust system is free from cracks, holes or dents which would restrict, reduce, allow leakage or any way prohibit the free flow of exhaust from the engine to the rear most portion of the tailpipe. The Exhaust Emissions Test requires one analyzer probe to be inserted 10" to 16" in the end of tailpipe. If the exhaust system is defective (leaking joints, holes, leaking seams, or leaking patches) this could interfere with an accurate exhaust emissions reading. A defective exhaust system is a failure item under the safety inspection requirements.
 - (3) The inspection mechanic shall conduct the emission test with the use of an exhaust emission analyzer which has met N.C. DEHNR certification and has been approved by the North Carolina Commissioner of Motor Vehicles or his designated agent.
 - (4) The emission's test shall be conducted using the following procedures: (All instructions provided by the analyzer must be followed):
 - (A) Idle Mode Emission Test:
 - (i) Analyzer must be warmed-up.
 - (ii) The analyzer shall prompt the inspector to test the vehicle in as-received condition with the

transmission in neutral or park. All accessories shall be turned off and the engine running at normal operating temperature.

- (iii) The inspector shall deploy a tachometer, insert the sample probe into the tailpipe, then the test sequence shall begin.
- (iv) Pre-condition mode shall initiate when engine speed is between 2200 and 2800 RPM and continue for 30 seconds.
- (v) Idle mode test shall start when the vehicle engine speed is between 350 and 1100 RPM. The mode shall last a minimum of 30 seconds and a maximum of 90 seconds.
- (vi) If the vehicle passes, the reported scores shall be the passing readings. If the vehicle fails, the inspector shall proceed to the second chance test.
- (vii) Second chance pre-condition mode shall initiate when engine speed is between 2200 and 2800 RPM and continue for 180 seconds.
- (viii) Second chance idle test shall start when the vehicle engine speed is between 350 and 1100 RPM. The mode shall last for a maximum of 90 seconds. NOTE: The engine shall be shut off and restarted for 1981-1986 Ford Motor Company products and 1984-1985 Honda Preludes, as instructed by the analyzer.
- (ix) The pass/fail analysis shall begin after an initial time delay of 10 seconds.
- (x) The pass/fail determination is made based on a comparison of the HC and CO readings against the idle emission standards for that particular vehicle.

(B) The analyzer shall test and disapprove a vehicle when the Carbon Monoxide (CO) or Hydrocarbon (HC) reading of the inspected vehicle is higher than the standards set forth in Paragraph (e) of this Rule.

(e) The following chart indicates the maximum allowed Emission Standards which became effective April 1, 1991:

<u>VEHICLE CLASS</u>	<u>MODEL YEAR</u>	<u>CARBON MONOXIDE</u>	<u>HYDROCARBON</u>
		<u>CO STANDARD</u>	<u>HC STANDARD</u>
<u>Light-duty vehicles</u>	<u>1975-1977</u>	<u>4.5</u>	<u>450</u>
	<u>1978-1979</u>	<u>3.5</u>	<u>350</u>
	<u>1980</u>	<u>2.0</u>	<u>250</u>
	<u>1981 & later</u>	<u>1.2</u>	<u>220</u>
<u>Heavy-duty vehicles</u>	<u>1975-78</u>	<u>5.0</u>	<u>500</u>
	<u>1979 & later</u>	<u>4.0</u>	<u>400</u>

(f) A challenge waiver may be issued by the Commissioner of Motor Vehicles or his designated agent. If the owner/operator of the vehicle suspects the analyzer is incorrect, he may petition the Division of Motor Vehicles to test the vehicle in question to determine the analyzer's accuracy. If the test determines the vehicle to be in compliance with the Emission Standards, a challenge waiver shall be issued and the Division shall immediately require an examination of the station analyzer in question and take corrective action.

Statutory Authority G.S. 20-2; 20-39.

.0545 SAFETY INSPECTION OF MOTORCYCLES

(a) Motorcycle brakes shall fail safety inspection if:

- (1) When applying brakes to moving vehicle, there is insufficient force to stop the vehicle.
- (2) Brakes are worn in such a manner that there is an uneven braking force.
- (3) There is an audible or visual indication that the brake lining is worn to the extent it is no longer serviceable.
- (4) There is less than one-third reserve in either footbrake or handbrake total

possible travel when the brakes are fully applied.

- (5) Reservoirs of braking cylinders are not full.
- (6) There is a visible leakage of fluid from any brake line or brake component.
- (7) Handbrake cables are frayed, broken, or frozen or linkage is defective.

(b) Motorcycle headlamps shall fail safety inspection if:

- (1) Headlamp does not operate properly.
- (2) There are more than two headlamps connected on a single switch.
- (3) Headlamp is cracked or has holes which

allow entry of water.

(4) There is standing water in the head-lamp.

(5) Headlamp is out of proper aim.

(c) Motorcycle rear lamps shall fail safety inspection if:

(1) They do not operate.

(2) Light is a color other than red.

(3) Light is cracked or broken and allows entry of water.

(4) There is standing water in the lens.

(5) Lamp is not securely mounted.

(6) Wiring is broken or frayed.

(d) A motorcycle stop lamp shall fail safety inspection if:

(1) Lamp does not operate when brakes are applied.

(2) Light is a color other than red or amber.

(3) Light is cracked or broken or allows entry of water.

(4) There is standing water in the lens.

(5) Lamp is not securely mounted.

(6) Wiring is broken or frayed.

(e) A motorcycle license plate light shall fail safety inspection if:

(1) Light does not operate.

(2) Light does not illuminate the license plate.

(3) Light is a color other than white.

(f) A motorcycle horn shall fail safety inspection if:

(1) The horn does not operate.

(2) The sound emitted is not audible at 200 feet.

(3) The horn is not securely mounted.

(4) The button is mounted so that it can not be easily operated by the driver.

(g) Motorcycle tires shall fail safety inspection if:

(1) There is less than two thirty-seconds of an inch of tread at two or more locations around the circumference of the tire in two adjacent major tread grooves, or if the tread wear indicators are in contact with the roadway at two or more locations around the circumference of the tire.

(2) Cords are exposed at any location on the tire.

(3) Sidewall is cut, bulging, damaged or is severely cracked due to dry rotting.

(h) Motorcycle rear view mirrors shall fail safety inspection if:

(1) The mirrors are missing, broken, or

cracked.

(2) The mirrors are not securely mounted.

(3) The mirrors will not hold a setting while vehicle is in operation.

(i) A motorcycle exhaust system shall fail safety inspection if:

(1) The motorcycle has no muffler.

(2) The muffler, exhaust or tailpipe have holes, leaking joints, seams, or patches.

(3) The tailpipe end is pinched.

(4) The exhaust system is equipped with a muffler cut out or bypass.

(5) The muffler baffles have been removed or damaged to create a straight pipe.

(j) A motorcycle steering mechanism shall fail safety inspection if:

(1) Front shocks are sagging or broken.

(2) Front end assembly is bent or there are damaged or twisted bolts.

(3) Front end nuts, bolts, or rivets are loose or missing.

Statutory Authority G.S. 20-2; 20-39; 20-183.3.

.0546 INVESTIGATION/AUDITS/ SAFETY OR EXHAUST EMISSIONS INSPECTION STATIONS

(a) Gas Audit Inspection: A DMV Inspector shall make a check of each station's calibration gas four times a year. This check is accomplished by measuring the concentration of the certified audit gas on the station's analyzer after calibration with the station's gas. If an analyzer fails it shall be placed in a lockout position until brought into compliance by the manufacturer and certified by retesting.

(b) Complaints To Be Investigated: All bona fide complaints received by the Commissioner about any inspection station shall be investigated for the purpose of determining whether there has been a violation of the inspection laws.

(c) Appropriate Action To Be Taken: When it appears from any investigation that the inspection law, has been violated by an inspection station or its agents or employees, or by a Self-inspector, the Commissioner shall take the appropriate action which may include but is not limited to suspension or revocation of the station's license and inspector certifications. When any such license is suspended or revoked, the owner of the station shall return the license, all unused inspection stickers, required records and reports and forms and supplies on hand to the Commissioner.

(d) Report of Undercover Investigation: Periodic

checks shall be made by undercover officers of the Division of Motor Vehicles routinely and upon receipt of complaints to determine compliance with inspection laws. If violations are detected, administrative action shall be taken by the Division of Motor Vehicles against the licensed station and the inspection mechanic.

(e) Revocation, Suspension or Denial: Any safety equipment or safety equipment exhaust emission inspection station whose license has been revoked or suspended may, prior to such revocation or suspension order being served, request a hearing before the Commissioner and in such cases the hearing shall be held as soon as practicable. To ensure such an opportunity to the licensee, an agent of the Commissioner shall offer in writing said hearing prior to serving a suspension or revocation order. If the licensee requests a hearing prior to the revocation or suspension order being served, the licensee shall be allowed to continue conducting inspections. The Commissioner, following such hearing, may rescind, amend or affirm the revocation or suspension order.

(f) When an authorized agent of the Division of Motor Vehicles Enforcement Section detects a violation, he shall immediately advise the owner/operator to discontinue all inspections/operations until he is in compliance and approved by the Division of Motor Vehicles Enforcement Section Inspector.

Statutory Authority G.S. 20-2; 20-39.

.0547 LICENSING TO REPLACE WINDSHIELD INSPECTION STICKERS

(a) Application for authority to replace windshield inspection stickers shall be made on forms furnished by the Enforcement Section of the North Carolina Division of Motor Vehicles and filed at the Motor Vehicle Building, 1100 New Bern Avenue, Raleigh, North Carolina, 27697. The applicant shall be engaged in the business of replacing windshields.

(b) If the provisions in G.S. 20-183.4 have been met, upon receipt of application, DMV Enforcement shall issue a license indicating the name of the business and the license number.

Statutory Authority G.S. 20-2; 20-39.

.0548 DENIAL, SUSPENSION/ REVOCATION/LICENSE/ REPLACE WINDSHIELD

INSPECTION STICKER

(a) The Commissioner shall deny the application of any applicant for Replacement of Inspection Stickers Upon Replacement of Windshield for Station License who fails to meet the qualifications:

- (1) Permanent established place of business accessible to the Division of Motor Vehicles for audit of records;
- (2) Be in the business of replacing windshields;
- (3) Not be currently under suspension or revocation as either a safety, safety/emissions, or windshield replacement station;
- (4) Be of good character and have a good reputation for honesty.

(b) The license of any business authorized to replace windshield inspection stickers shall be subject to suspension or revocation for failure to comply with the North Carolina General Statutes or these Rules governing the issuing of replacement inspection stickers and the required reporting procedure.

(c) Upon suspension or revocation of a license such business shall surrender all unused inspection stickers to the Division of Motor Vehicles.

Statutory Authority G.S. 20-2; 20-39.

.0549 OPERATION TO REPLACE WINDSHIELD INSPECTION STICKERS

(a) Each business authorized to replace windshield inspection stickers shall display in a conspicuous place the license issued by the Enforcement Section of the North Carolina Division of Motor Vehicles.

(b) The business may include a charge to its customer for a replaced windshield sticker of the actual amount paid to the Motor Vehicle Division for such sticker.

(c) Inspection stickers:

- (1) Acquisition.
 - (A) Orders for inspection stickers may be placed with a local agent of the Enforcement Section. Requests for safety inspection stickers must be accompanied by remittance in the amounts required in G.S. 20-183.7. Orders for stickers shall be placed in units of 50.
 - (B) Orders placed for inspection stickers shall be on forms prepared by the Division and shall bear the signature

of the owner, partner, officer of the corporation or an authorized representative. Such forms shall upon request be furnished by the Division. The stickers shall be delivered in a manner determined by the Division.

- (C) All businesses authorized to replace windshield inspection stickers shall keep a supply of inspection stickers and numeral inserts on hand at all times.

- (2) Application of Sticker: The inspection sticker shall be placed on the new windshield at the bottom of the left side so that the left edge of the sticker is no more than one inch from the left side of the windshield. Prior to affixing the inspection sticker the appropriate numeral inserts indicating the month and year the vehicle was previously inspected shall be attached. The person placing this sticker on the new windshield shall enter on such sticker in the appropriate spaces the same date of inspection, odometer mileage and inspection station's license number as that shown on the sticker attached to the windshield removed. At the space marked "Inspected By" the license number assigned to the business replacing the windshield and the initials of the person affixing the sticker shall be entered. This information shall be entered on the sticker with a ball point pen or a laundry marking pen. Glass/plastic windshields require a platform to prevent damage to the windshield. The inspection sticker shall be affixed to the platform. When the sticker is removed it shall be self voiding.

- (3) Control:

- (A) All businesses authorized to replace windshield inspection stickers shall be held strictly accountable for inspection stickers in their possession. Any such business losing or not accounting for any inspection stickers shall be subject to revocation or suspension of their license to replace windshield inspection stickers. Stickers shall be locked in a safe place to guard against loss or theft.
- (B) Upon discovery of a loss or theft of any inspection stickers the licensee

must as soon as practicable report such loss or theft to the Enforcement Section, Motor Vehicles Building, 1100 New Bern Avenue, Raleigh, North Carolina, 27697. Oral reports shall be made upon discovery of loss or theft by the quickest means available to the local Enforcement Inspector.

- (C) Businesses licensed to replace windshield inspection stickers shall not furnish, give, loan or sell inspection stickers to any other licensed business, inspection station, self-inspector or any other person.

- (D) Inspection stickers shall not be transferred or reissued. They may only be affixed to the vehicle as designated on the inspection report sheet and only when the windshield has been replaced by the licensee.

- (E) Each licensed business shall protect stickers from larceny or damage and no refund shall be allowed for stolen, soiled, lost or torn stickers and the count of the Division for returned stickers shall be accepted as final. An account must be made for all unused stickers. Refund shall be made for unused stickers upon termination of license of such place of business.

- (F) All inspection supplies, unused stickers, copies of receipts and statements pertaining to the issuance of stickers, all bulletins and all forms issued by the Division of Motor Vehicles pursuant to the carrying out of this program are the property of the Division of Motor Vehicles and must be treated as such by the licensee. Upon suspension or revocation of any license issued to a business to replace windshield inspection stickers or whenever any licensee voluntarily surrenders such license or ceases to do business, all items held by such licensee in carrying out this program shall be surrendered to the Division of Motor Vehicles. Such items shall be inventoried by the designated agent of the Division of Motor Vehicles and shall be receipted upon surrender.

- (4) Requirements and Records:

- (A) Monthly report forms. Each licensed

windshield replacement station shall maintain at the station a monthly report sheet listing the beginning and ending numbers for each series of stickers placed on windshields upon forms furnished by the Division. This report shall be completed in duplicate and the original forwarded to the Enforcement Section, North Carolina Division of Motor Vehicles, 1100 New Bern Avenue, Raleigh, North Carolina 27697, monthly on or before the 10th of the month following the month for which it was completed. The second copy shall be retained by the station for a period of at least 18 months.

(B) Licensed business which replace windshield inspection stickers shall furnish the operator of each vehicle in which they have replaced a windshield and affixed an inspection sticker an authorized "Receipt and Statement". This form shall be made in duplicate, upon forms furnished by the Division of Motor Vehicles and a copy shall be retained by the licensee for a period of at least 18 months following the date the sticker is placed on the windshield.

(C) Records available. Each windshield replacement station shall maintain records required and such records shall be made available for inspection by any law enforcement officer, upon demand, during normal business hours.

Statutory Authority G.S. 20-2; 20-39.

.0550 RECOGNITION OF SAFETY INSPECTIONS ISSUED BY CERTAIN OTHER JURISDICTIONS

(a) This Rule applies to commercial vehicles only.

(b) The Commissioner of Motor Vehicles may promulgate rules to honor safety inspection stickers issued in other jurisdictions until the time of expiration. Any commercial motor vehicle registered or required to be registered in North Carolina displaying a valid safety inspection sticker issued by another jurisdiction and for which a valid and current inspection sticker has been issued by such jurisdiction shall be exempt from the North Carolina safety inspection sticker.

Exception - Vehicles that are registered or based in an exhaust emission county in this state and are required to be inspected under the safety equipment exhaust emission program.

(c) The states whose motor vehicle safety inspection requirements equal or exceed the requirements of the North Carolina safety inspection program are listed below:

District of Columbia	Pennsylvania
Maine	Rhode Island
New Hampshire	Utah
New Jersey	Vermont
New York	Virginia
West Virginia	

Statutory Authority G.S. 20-2; 20-39.

.0551 APPROVAL AND DISAPPROVAL OF VEHICLES

Vehicles shall not be disapproved based upon any item other than the 11 items enumerated in this Section or for any reason other than those specified in 19A NCAC 03D .0533 through 03D .0545.

Statutory Authority G.S. 20-2; 20-39.

.0552 WAIVERS FROM EXHAUST EMISSIONS TEST REQUIREMENTS

(a) The Commissioner, or Enforcement Section employees who are designated by the Commissioner, may issue a written waiver from the applicable exhaust emissions test standards for any vehicle, except vehicles listed in Paragraph (g) of this Rule, if the waiver issuance criteria have been met.

(b) A written waiver shall be issued in accordance with this rule upon request when all of the following criteria have been met to the satisfaction of the Commissioner or the designated Enforcement Section employee:

- (1) The vehicle passed the safety portion of the inspection as shown by the vehicle inspection receipt completed by the licensed self-inspector or inspection station that performed the inspection.
- (2) The vehicle failed the exhaust emissions portion of the inspection as shown by the vehicle inspection receipt completed by the licensed self-inspector or inspection station that performed the inspection.
- (3) The vehicle is equipped with each exhaust emissions control device listed in Rule .0543 of this Section, if such

device was equipped on the vehicle by the manufacturer. If the unleaded gas restrictor has been removed or rendered inoperable, the catalytic converter must be replaced.

(4) Qualifying repairs have been completed on the vehicle within 45 days following the initial failed exhaust emissions inspection. Proof of repairs must be shown by itemized and dated receipts from the person or business that provided the repair service or parts. Receipts for parts shall name the part and not just the stock number. Qualifying repairs means repairs performed on a vehicle for the purpose of repairing the cause of the exhaust emissions inspection failure. The repairs must be appropriate to the cause of the test failure. A visual inspection of the vehicle shall be made by the designated Enforcement Section employee to determine if repairs were actually performed if, given the nature of the repair, this can be visually confirmed.

(A) For pre-1981 model year vehicles, qualifying repairs may be performed by any person, including the vehicle owner.

(B) For 1981 and later model year vehicles, qualifying repairs must be performed by a person who is professionally engaged in vehicle repairs or who is employed by a business whose purpose is vehicle repair or who possesses a certification from the National Institute For Automotive Service Excellence for emission-related diagnosis and repair.

(5) The minimum repair expenditure applicable to the vehicle has been met by having qualifying repairs performed on the vehicle.

(A) For 1975-1980 model year vehicles, the minimum repair expenditure is seventy-five dollars (\$75.00). Only the costs of parts are applied toward the minimum repair expenditure on these vehicles if the repairs are performed by the vehicle owner or by a person who is not professionally engaged in vehicle repairs or who is not employed by a business whose purpose is vehicle repair or who does

not possess a certification from the National Institute For Automotive Service Excellence for emission-related diagnosis and repair.

(B) For 1981 and later model year vehicles, the minimum repair expenditure is two hundred dollars (\$200.00), including parts and labor costs.

(C) The cost of repairs to correct or replace emissions control devices that have been removed, disconnected or rendered inoperable shall not be applied toward the minimum repair expenditure for any vehicle, regardless of model year.

(D) The cost of diagnostic testing to determine whether the vehicle meets exhaust emissions standards shall not be applied toward the minimum repair expenditure.

(E) Any available warranty coverage on the vehicle must be used to obtain the needed repairs before expenditures may be applied to the minimum repair expenditure.

(6) The vehicle owner has received a written denial of warranty coverage from the vehicle manufacturer or authorized dealer if the vehicle is within the statutory age and mileage coverage under section 207(b) of the Federal Clean Air Act [42 U.S.C. 754(b)].

(7) After qualifying repairs have been completed and within 45 days after failing the initial exhaust emissions inspection, the vehicle failed another exhaust emissions inspection as shown by the vehicle inspection receipt completed by the licensed self-inspector or inspection station that performed the inspection.

(c) The vehicle owner or person authorized by the owner must request the waiver and present the vehicle and current registration sticker at the Division Enforcement Section office that serves the county in which the vehicle is registered. The receipts and other documents required by Paragraph (b) of this Rule must be submitted to the designated Enforcement Section employee at the time of the request for a waiver.

(d) The designated Enforcement Section employee shall review the receipts and documents submitted in connection with the waiver request and shall make a visual inspection of the vehicle to verify

that the criteria listed in Paragraph (b) of this Rule have been met. If the Enforcement Section employee is satisfied that the waiver criteria have been met, the Division must issue a written waiver for the vehicle on a form provided by the Division.

(e) The vehicle owner or person authorized by the owner must present the waiver to the licensed self-inspector or inspection station that performed the initial safety and exhaust emissions inspection. The self-inspector or inspection station shall reinspect the vehicle in accordance with the rules under this Section, except for the exhaust emissions portion of the inspection. The waiver authorization number shown on the written waiver must be entered into the exhaust emissions analyzer. If the vehicle meets all other requirements of the inspection, the self-inspector or inspection station shall affix a valid inspection sticker to the vehicle which shall expire at the same time it would if the vehicle had passed the exhaust emissions inspection.

(f) Each self-inspector and inspection station must maintain a copy of the written waivers for vehicles inspected and approved by the station for at least 18 months in the same manner and under the same conditions as other inspection records which are required to be maintained pursuant to G.S. 20-183.6A(b).

(g) Waivers shall not be issued for any of the following vehicles:

- (1) Vehicles that are owned, operated or leased by a licensed self-inspector;
- (2) Vehicles that are owned or being held for retail sale by a motor vehicle dealer, as defined in G.S. 20-286(11).

Statutory Authority G.S. 20-39.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS

CHAPTER 6 - BOARD OF BARBER EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina State Board of Barber Examiners intends to amend rules cited as 21 NCAC 6F .0001, .0014; 6J .0002; 6K .0003; 6L .0002 - .0003, .0006 - .0007; and 6M .0002.

The proposed effective date of this action is November 1, 1994.

The public hearing will be conducted at 4:00 p.m. on August 22, 1994 at 3000 Industrial Drive, Bldg. G, Raleigh, NC 27609.

Reason for Proposed Action:

21 NCAC 6F .0001 - *To modify barber school physical structure and equipment requirements.*

21 NCAC 6F .0014 - *To require instructor signatures on reports.*

21 NCAC 6J .0002 - *Change of forfeiture of fee requirements.*

21 NCAC 6K .0003 - *Change of forfeiture of fees requirements.*

21 NCAC 6L .0002 - *To change the size of barber shops.*

21 NCAC 6L .0003 - *To modify barber shop equipment requirements.*

21 NCAC 6L .0006 - *To modify shop size and separation from other businesses.*

21 NCAC 6L .0007 - *To allow patrons from a cosmetology shop to share a bathroom with patrons from a barber shop.*

21 NCAC 6M .0002 - *Set out additional duties and responsibilities of inspectors.*

Comment Procedures: Written comments must be submitted to the Board office by 4:00 p.m. on August 22, 1994.

SUBCHAPTER 6F - BARBER SCHOOLS

.0001 PHYSICAL STRUCTURE

The physical structure of barber schools in North Carolina shall conform to the following criteria:

- (1) be a minimum of 14 feet wide;
- (2) be equipped with a minimum of ten barber chairs in sanitary and safe condition sufficient for the number of students enrolled;
- (3) have a minimum of 896 square feet in the practical area for the first ten chairs;
- (4) have an additional 70 square feet in the practical area for each additional barber chair over the required ten;
- (5) have at least five feet of space between each chair, center to center;
- (6) have no more than $1\frac{3}{4}$ students enrolled per barber chair;
- (7) be equipped with toilet facilities with hand-washing sink or basin sufficient to serve the number of people at the school;
- (8) have concrete and wood floors covered with smooth, nonporous materials;

- (9) have instructional materials (blackboard space, slide programs, etc.) sufficient to teach barbering;
- (10) have an adequate workstand for each barber chair in the practical work area, constructed of such material as to render it easily cleaned;
- (11) have an adequate tool cabinet for each barber chair, with a door as nearly air tight as possible;
- (12) have at least one sink or lavatory for each two barber chairs;
- (13) have the school separate from any other place or type of business by a substantial wall of ceiling height; and
- (14) have classroom and desk chairs sufficient to serve the number of students enrolled.

Statutory Authority G.S. 86A-15; 86A-22.

0014 SIGNATURES ON REPORTS

All reports, records, or other documents required by applicable statutes or rules shall be submitted to the Board over the signature of ~~the manager~~ two instructors, of the school, and co-signed by the student.

Statutory Authority G.S. 86A-22.

SUBCHAPTER 6J - APPRENTICE BARBERS

0002 FORFEITURE OF FEE

The examination fee paid by an apprentice applicant will be forfeited if the applicant fails to appear for ~~three~~ two examinations after the Board has notified him of the Board's acceptance of his application and of the date and time of the next examination. A new fee will be required to sit for the examination after forfeiture.

Statutory Authority G.S. 86A-25.

SUBCHAPTER 6K - REGISTERED BARBERS

0003 FORFEITURE OF FEE

The examination fee paid by a registered barber applicant will be forfeited if the applicant fails to appear for ~~three~~ two examinations after the Board has notified him of the Board's acceptance of his application and of the date and time of the next examination. A new fee will be required to sit for the examination after forfeiture.

Statutory Authority G.S. 86A-25.

SUBCHAPTER 6L - BARBER SHOPS

.0002 MEASUREMENTS OF BARBER SHOP

(a) Except as stated in (b) of this Rule, each barber shop shall be a minimum of ~~14 feet in width at the entrance, the length of the shop shall be a minimum of 14 feet, and the shop shall have five feet of space between each barber chair, from center to center of each chair, and shall have seven feet of space from each chair to the walls of the shop, front and rear~~ 196 square feet measured from the inside walls of the shop, not including common areas shared with other businesses or residents. In addition, each chair shall be located in an area where there is no less than 12 feet from front wall to back wall, measured through the center of the chair, with the back wall being the wall or plan to which the backstand is affixed. There shall be a minimum of five feet of space between each barber chair, from center to center of each chair and there shall be no less than three feet from the center of any chair to any side wall. There shall be an unobstructed aisle in front of each chair of no less than four feet.

(b) Barber shops existing prior to February 1, 1976, must be a minimum of 12 feet in width and 14 feet in length.

Statutory Authority G.S. 86A-15.

.0003 EQUIPMENT

Each barber shall have a cabinet for barbering equipment. Such cabinets shall be constructed of material that may be easily cleaned. Each shop shall have smooth finished walls, ceilings and floors, and no exposed pipes. Each barber chair shall be covered with a smooth, non-porous surface, such as vinyl or leather, which is easily cleaned. Each shop shall have within said shop or building adequate toilet facilities and hand-washing sink or basin.

Statutory Authority G.S. 86A-15.

.0006 SEPARATION FROM OTHER BUSINESSES

When a building or room is used for both a barber shop and for some other business and the building or room has limited air conditioning or heat outlets and air circulation is a problem, the required partition between the shop and the other

business may be completed from the floor up to a minimum of six feet with some open-like material from six feet to the ceiling to permit good air circulation. Where a barber shop is located within a shop licensed by the North Carolina Board of Cosmetic Art Examiners, the area within which the barber chair or chairs are located must be separated from the cosmetology shop by a partition or wall of at least seven feet in height and constructed of a solid, smooth finished material, but which may contain a door. Within the barber shop area, each barber chair shall be located in an area where there is no less than 12 feet from front wall to back wall, measured through the center of the chair, with the back wall being the wall or plain to which the backstand is affixed. There shall be a minimum of five feet of space between each barber chair, from center to center of each chair and there shall be no less than three feet from the center of any chair to any side wall. There shall be an unobstructed aisle in from of each chair of no less than four feet. The area where the barber chair or chairs are located must otherwise comply with all other sanitary rules and laws not inconsistent with this Rule.

Statutory Authority G.S. 86A-1; 86A-15.

.0007 LAVATORY

Each barber in a barber shop shall be provided with a lavatory sink located within ~~his immediate~~ seven feet barbering area. Where a barber shop is located within a shop licensed by the North Carolina Board of Cosmetic Art Examiners, the bathroom may be shared with the cosmetology shop.

Statutory Authority G.S. 86A-15.

SUBCHAPTER 6M - BARBERSHOP INSPECTORS

.0002 DUTIES AND RESPONSIBILITIES

The duties and responsibilities of barber shop inspectors shall be as follows:

- (1) to regularly inspect existing barber shops and barber schools and to inspect new barber shops and barber schools prior to opening;
- (2) to investigate complaints in the inspector's assigned inspection area;
- (3) to file weekly reports with the Board which contain a summary of the inspector's activities of the past week and make necessary recommendations to the Board;

- (4) to write receipts for all money collected, providing duplicate copies to the payor and to the Board office;
- (5) to administer examinations as directed by the Board office.

Statutory Authority G.S. 86A-7; 86A-13; 86A-15; 86A-22.

CHAPTER 32 - BOARD OF MEDICAL EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Medical Examiners intends to amend rule cited as 21 NCAC 32F .0003.

The proposed effective date of this action is October 1, 1994.

The public hearing will be conducted at 1:00 p.m. on August 1, 1994 at the NC Board of Medical Examiners, 1203 Front Street, Raleigh, NC 27609.

Reason for Proposed Action: Legislative change of G.S. 90-15.1 allowing a registration fee of up to \$200.00 every odd numbered year.

Comment Procedures: Persons interested may present written or oral statements relevant to the actions proposed at a hearing to be held as indicated above. Written statements not presented at the hearing should be postmarked no later than August 15, 1994 and mailed to the following address: Administrative Procedures, NCBME, PO Box 20007, Raleigh, NC 27619.

SUBCHAPTER 32F - BIENNIAL REGISTRATION

.0003 FEE

Each physician shall pay a biennial registration fee of ~~one two~~ two hundred dollars ~~(\$100.00)~~ (\$200.00) to the Board every odd numbered year in accordance with G.S. 90-15.1; except, each physician holding a resident's training license shall pay a biennial registration fee of twenty-five dollars (\$25.00).

Statutory Authority G.S. 90-15.1.

**CHAPTER 48 - BOARD OF
PHYSICAL THERAPY
EXAMINERS**

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Physical Therapy Examiners intends to amend rule cited as 21 NCAC 48F .0002.

The proposed effective date of this action is October 1, 1994.

The public hearing will be conducted at 2:00 p.m. on Friday, August 12, 1994 at the NC Board of Physical Therapy Examiners, 18 West Colony Place, Suite 120, Durham, North Carolina 27705.

Reason for Proposed Action: To increase fees for first time in three years to reflect cost increases.

Comment Procedures: Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments from July 15, 1994 to 5:00 p.m. on August 15, 1994. Such written comments must be delivered or mailed to Constance W. Peake, NC Board of Physical Therapy Examiners, 18 West Colony Place, Suite 120, Durham, NC 27705.

**SUBCHAPTER 48F - CERTIFICATES:
FEES: INVESTIGATIONS: RECORD
OF LICENSEES**

.0002 FEES

(a) The following fees are charged by the Board:

- (1) application for physical therapist licensure:
 - (A) by endorsement or examination taken in another state, one hundred dollars (\$100.00);
 - (B) by examination, ~~ninety dollars (\$90.00)~~ one hundred dollars (\$100.00) plus cost of examination;
 - (C) by revival of lapsed license pursuant to 21 NCAC 48G .0203(2)(a), ~~ninety dollars (\$90.00)~~ one hundred dollars (\$100.00) plus cost of examination;

- (D) by revival of lapsed license pursuant to 21 NCAC 48G .0203(2)(b), ~~ninety dollars (\$90.00)~~ one hundred dollars (\$100.00);
- (2) application for physical therapist assistant licensure:
 - (A) by endorsement or examination taken in another state, ~~eighty-five dollars (\$85.00)~~ ninety dollars (\$90.00);
 - (B) by examination, ~~seventy-five dollars (\$75.00)~~ ninety dollars (\$90.00) plus cost of examination;
 - (C) by revival of lapsed license pursuant to 21 NCAC 48G .0203(2)(a), ~~seventy-five dollars (\$75.00)~~ ninety dollars (\$90.00) plus cost of examination;
 - (D) by revival of lapsed license pursuant to 21 NCAC 48G .0203(2)(b), ~~seventy-five dollars (\$75.00)~~ ninety dollars (\$90.00);
- (3) renewal for all persons, ~~thirty dollars (\$30.00)~~ forty dollars (\$40.00);
- (4) penalty for late renewal, twenty dollars (\$20.00) plus renewal fee;
- (5) revival of license lapsed less than five years, twenty-five dollars (\$25.00) plus renewal fee;
- (6) transfer of licensure information fee, including either the examination scores or licensure verification or both, fifteen dollars (\$15.00);
- (7) retake examination, thirty dollars (\$30.00) plus actual cost of examination;
- (8) certificate replacement or duplicate, fifteen dollars (\$15.00);
- (9) directory of licensees, five dollars (\$5.00);
- (10) computer print-out or labels of any portion of list of physical therapists, sixty dollars (\$60.00);
- (11) computer print-out or labels of any portion of list of physical therapist assistants, twenty dollars (\$20.00);
- (12) processing fee for returned checks, fifteen dollars (\$15.00).

(b) The application fee is not refundable. The Board will consider written requests for a refund of other fees on an individual basis.

Statutory Authority G.S. 25-3-512; 90-270.33.

The Rules Review Commission (RRC) objected to the following rules in accordance with G.S. 143B-30.2(c). State agencies are required to respond to RRC as provided in G.S. 143B-30.2(d).

AGRICULTURE

Markets

2 NCAC 43L .0113 - Gate Fees	RRC Objection	05/19/94
Agency Revised Rule	Obj. Removed	05/19/94
2 NCAC 43L .0304 - Horse Facility	RRC Objection	05/19/94
Agency Revised Rule	Obj. Removed	05/19/94
2 NCAC 43L .0320 - Dress of Lessees	RRC Objection	05/19/94
Agency Revised Rule	Obj. Removed	05/19/94
2 NCAC 43L .0322 - Display or Sale of Weapons	RRC Objection	05/19/94
Agency Revised Rule	Obj. Removed	05/19/94
2 NCAC 43L .0331 - Premiums and Awards	RRC Objection	05/19/94
Agency Revised Rule	Obj. Removed	05/19/94
2 NCAC 48A .1702 - Noxious Weeds	RRC Objection	05/19/94
Agency Revised Rule	Obj. Removed	05/19/94

COMMERCE

Community Assistance

4 NCAC 19L .0502 - Eligibility Requirements	RRC Objection	05/19/94
Agency Revised Rule	Obj. Removed	05/19/94
4 NCAC 19L .0901 - Grant Agreement	RRC Objection	05/19/94
Agency Revised Rule	Obj. Removed	05/19/94
4 NCAC 19L .1302 - Eligibility Requirements	RRC Objection	05/19/94
Agency Revised Rule	Obj. Removed	05/19/94

Energy

4 NCAC 12C .0007- Institutional Conservation Program	RRC Objection	06/16/94
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ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Coastal Management

15A NCAC 7H .1104 - General Conditions	RRC Objection	05/19/94
Agency Revised Rule	RRC Objection	05/19/94
Agency Filed Rule for Codification Over RRC Objection	Eff.	07/01/94
15A NCAC 7H .1204 - General Conditions	RRC Objection	05/19/94
Agency Revised Rule	RRC Objection	05/19/94
Agency Filed Rule for Codification Over RRC Objection	Eff.	07/01/94
15A NCAC 7H .1304 - General Conditions	RRC Objection	05/19/94
Agency Revised Rule	RRC Objection	05/19/94
Agency Filed Rule for Codification Over RRC Objection	Eff.	07/01/94
15A NCAC 7H .1404 - General Conditions	RRC Objection	05/19/94
Agency Revised Rule	RRC Objection	05/19/94

RRC OBJECTIONS

<i>Agency Filed Rule for Codification Over RRC Objection</i>		Eff. 07/01/94
15A NCAC 7H .1504 - General Conditions	RRC Objection	05/19/94
<i>Agency Revised Rule</i>		RRC Objection 05/19/94
<i>Agency Filed Rule for Codification Over RRC Objection</i>		Eff. 07/01/94
15A NCAC 7H .1604 - General Conditions	RRC Objection	05/19/94
<i>Agency Revised Rule</i>		RRC Objection 05/19/94
<i>Agency Filed Rule for Codification Over RRC Objection</i>		Eff. 07/01/94
15A NCAC 7H .1704 - General Conditions	RRC Objection	05/19/94
<i>Agency Revised Rule</i>		RRC Objection 05/19/94
<i>Agency Filed Rule for Codification Over RRC Objection</i>		Eff. 07/01/94
15A NCAC 7H .1804 - General Conditions	RRC Objection	05/19/94
<i>Agency Revised Rule</i>		RRC Objection 05/19/94
<i>Agency Filed Rule for Codification Over RRC Objection</i>		Eff. 07/01/94
15A NCAC 7H .1904 - General Conditions	RRC Objection	05/19/94
<i>Agency Revised Rule</i>		RRC Objection 05/19/94
<i>Agency Filed Rule for Codification Over RRC Objection</i>		Eff. 07/01/94
15A NCAC 7H .2104 - General Conditions	RRC Objection	05/19/94
<i>Agency Revised Rule</i>		RRC Objection 05/19/94
<i>Agency Filed Rule for Codification Over RRC Objection</i>		Eff. 07/01/94

Departmental Rules

15A NCAC 1J .0303 - Filing of Required Supplemental Information	RRC Objection	06/16/94
<i>Agency Revised Rule</i>		Obj. Removed 06/16/94
15A NCAC 1J .0701 - Public Necessity: Health: Safety and Welfare	RRC Objection	06/16/94
<i>Agency Revised Rule</i>		RRC Objection 06/16/94
15A NCAC 1L .0302 - General Provisions	RRC Objection	06/16/94
<i>Agency Revised Rule</i>		Obj. Removed 06/16/94
15A NCAC 1L .0602 - Public Health Need	RRC Objection	06/16/94
<i>Agency Revised Rule</i>		Obj. Removed 06/16/94

Environmental Health

15A NCAC 18A .2610 - Storage: Handling: and Display of Food	RRC Objection	06/16/94
<i>Agency Revised Rule</i>		Obj. Removed 06/16/94
15A NCAC 18A .2645 - Requirements for Limited Food Service Establishments	RRC Objection	06/16/94
<i>Agency Revised Rule</i>		Obj. Removed 06/16/94
15A NCAC 18C .0202 - Removal of Dissolved Matter and Suspended Matter	RRC Objection	06/16/94
<i>Agency Revised Rule</i>		Obj. Removed 06/16/94
15A NCAC 18C .0203 - Public Well Water Supplies	RRC Objection	06/16/94
<i>Agency Revised Rule</i>		Obj. Removed 06/16/94
15A NCAC 18C .0402 - Water Supply Wells	RRC Objection	06/16/94
<i>Agency Revised Rule</i>		Obj. Removed 06/16/94
15A NCAC 18C .0403 - Surface Water Facilities	RRC Objection	06/16/94
<i>Agency Revised Rule</i>		Obj. Removed 06/16/94
15A NCAC 18C .0404 - Water Treatment Facilities	RRC Objection	06/16/94
<i>Agency Revised Rule</i>		Obj. Removed 06/16/94
15A NCAC 18C .0405 - Storage of Finished Water	RRC Objection	06/16/94
<i>Agency Revised Rule</i>		Obj. Removed 06/16/94
15A NCAC 18C .0710 - Other Water Treatment Plants	RRC Objection	06/16/94
<i>Agency Revised Rule</i>		Obj. Removed 06/16/94
15A NCAC 18C .0711 - Alternative Filtration Treatment Technologies	RRC Objection	06/16/94
<i>Agency Revised Rule</i>		Obj. Removed 06/16/94
15A NCAC 18C .0714 - Pilot Plant Studies	RRC Objection	06/16/94
<i>Agency Revised Rule</i>		Obj. Removed 06/16/94

RRC OBJECTIONS

15A NCAC 18C .0802 - Capacities: Determining Peak Demand Agency Revised Rule	RRC Objection Obj. Removed	06/16/94 06/16/94
15A NCAC 18C .0803 - Capacities: Determining Total Volume Agency Revised Rule	RRC Objection Obj. Removed	06/16/94 06/16/94
15A NCAC 18C .0805 - Capacities: Elevated Storage Agency Revised Rule	RRC Objection Obj. Removed	06/16/94 06/16/94
15A NCAC 18C .1002 - Disinfection of Wells Agency Revised Rule	RRC Objection Obj. Removed	06/16/94 06/16/94
15A NCAC 18C .1004 - Disinfection of Filters Agency Revised Rule	RRC Objection Obj. Removed	06/16/94 06/16/94
15A NCAC 18C .1102 - Authorized Persons Within Watershed Area Agency Revised Rule	RRC Objection Obj. Removed	06/16/94 06/16/94
15A NCAC 18C .1209 - Untreated Domestic Sewage or Industrial Wastes Agency Revised Rule	RRC Objection Obj. Removed	06/16/94 06/16/94
15A NCAC 18C .1406 - Control of Treatment Process Agency Revised Rule	RRC Objection Obj. Removed	06/16/94 06/16/94
15A NCAC 18C .1511 - Concentration of Iron Agency Revised Rule	RRC Objection Obj. Removed	06/16/94 06/16/94
15A NCAC 18C .1512 - Concentration of Manganese Agency Revised Rule	RRC Objection Obj. Removed	06/16/94 06/16/94
15A NCAC 18C .1533 - Total Trihalomethanes Sampling/Analysis: < 10,000 Agency Revised Rule	RRC Objection Obj. Removed	06/16/94 06/16/94

Environmental Management

15A NCAC 2D .0101 - Definitions Agency Revised Rule	RRC Objection Obj. Removed	06/16/94 06/16/94
15A NCAC 2D .0932 - Gasoline Truck Tanks and Vapor Collection Systems Agency Revised Rule	RRC Objection Obj. Removed	06/16/94 06/16/94

Wildlife Resources and Water Safety

15A NCAC 10D .0002 - General Regulations Regarding Use Agency Revised Rule	RRC Objection Obj. Removed	06/16/94 06/16/94
15A NCAC 10H .0101 - License to Operate Agency Revised Rule	RRC Objection Obj. Removed	06/16/94 06/16/94

HUMAN RESOURCES

Children's Services

10 NCAC 41F .0704 - Physical Facility Agency Revised Rule	RRC Objection Obj. Removed	04/21/94 04/21/94
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Facility Services

10 NCAC 3E .0201 - Building Code Requirements Agency Revised Rule	RRC Objection Obj. Removed	06/16/94 06/16/94
10 NCAC 3E .0206 - Elements and Equipment Agency Revised Rule	RRC Objection Obj. Removed	06/16/94 06/16/94
10 NCAC 3R .4206 - Accessibility Agency Revised Rule	RRC Objection Obj. Removed	06/16/94 06/16/94
10 NCAC 3U .0713 - Staff/Child Ratios for Medium and Large Centers Agency Revised Rule	RRC Objection Obj. Removed	06/16/94 06/16/94

Mental Health, Developmental Disabilities and Substance Abuse Services

0 NCAC 45G .0139 - Security Requirements Generally	RRC Objection	06/16/94
Agency Revised Rule	Obj. Removed	06/16/94

Mental Health: General

0 NCAC 14C .1148 - Thomas S. Community Services	RRC Objection	06/16/94
Agency Revised Rule	Obj. Removed	06/16/94

Mental Health: MR Centers

0 NCAC 16A .0402 - Explanation of Terms	RRC Objection	06/16/94
Agency Revised Rule	Obj. Removed	06/16/94
0 NCAC 16A .0403 - Designation Procedures	RRC Objection	06/16/94
Agency Revised Rule	Obj. Removed	06/16/94

INDEPENDENT AGENCIES

State Health Plan Purchasing Alliance Board

4 NCAC 5 .0302 - Designation Process	RRC Objection	06/16/94
Agency Revised Rule	Obj. Removed	06/16/94

INSURANCE

Agent Services Division

1 NCAC 6A .0802 - Licensee Requirements		
Rule Withdrawn by Agency		05/19/94

Multiple Employer Welfare Arrangements

1 NCAC 18 .0019 - "Qualified Actuary"; Maximum Net Retention Filing	RRC Objection	06/16/94
Agency Revised Rule	Obj. Removed	06/16/94
1 NCAC 18 .0021 - Certification of Reserves Filing	RRC Objection	06/16/94
Agency Revised Rule	Obj. Removed	06/16/94

JUSTICE

Departmental Rules

2 NCAC 1 .0212 - Grievance Procedure	RRC Objection	05/19/94
Agency Repealed Rule	Obj. Removed	05/19/94

Private Protective Services

2 NCAC 7D .1101 - Definitions	RRC Objection	06/16/94
Agency Revised Rule	Obj. Removed	06/16/94
2 NCAC 7D .1104 - Training and Supervision Required in Level Three	RRC Objection	06/16/94
Agency Revised Rule	Obj. Removed	06/16/94

LICENSING BOARDS AND COMMISSIONS

Chiropractic Examiners

21 NCAC 10 .0303 - Solicitation of Auto Accident Victims
Agency Withdrew Rule

05/19/94

Cosmetic Art Examiners

21 NCAC 14H .0008 - Floor Coverings
Agency Revised Rule

RRC Objection 05/19/94
Obj. Removed 05/19/94

21 NCAC 14H .0011 - Cleanliness of Operators
Agency Revised Rule

RRC Objection 05/19/94
Obj. Removed 05/19/94

21 NCAC 14H .0018 - Systems of Grading Beauty Establishments
Agency Revised Rule

RRC Objection 05/19/94
Obj. Removed 05/19/94

General Contractors

21 NCAC 12 .0205 - Filing Deadline/APP Seeking Qual/Emp/Another
Agency Revised Rule

RRC Objection 05/19/94
Obj. Removed 05/19/94

Medical Examiners

21 NCAC 32P .0001 - Name of Limited Liability Company
Agency Revised Rule

RRC Objection 05/19/94
Obj. Removed 05/19/94

21 NCAC 32O .0001 - Definitions
Agency Revised Rule

RRC Objection 05/19/94
Obj. Removed 05/19/94

21 NCAC 32O .0002 - Qualifications for License
Agency Revised Rule

RRC Objection 05/19/94
Obj. Removed 05/19/94

21 NCAC 32O .0003 - Temporary License
Agency Revised Rule

RRC Objection 05/19/94
Obj. Removed 05/19/94

21 NCAC 32O .0005 - Annual Registration
Agency Revised Rule

RRC Objection 05/19/94
Obj. Removed 05/19/94

21 NCAC 32O .0007 - Exemption from License
Agency Revised Rule

RRC Objection 05/19/94
Obj. Removed 05/19/94

21 NCAC 32O .0015 - Assumption of Professional Liability
Agency Revised Rule

RRC Objection 05/19/94
Obj. Removed 05/19/94

21 NCAC 32O .0017 - Disciplinary Authority
Agency Revised Rule

RRC Objection 05/19/94
Obj. Removed 05/19/94

21 NCAC 32O .0021 - Fees
Agency Revised Rule

RRC Objection 05/19/94
Obj. Removed 05/19/94

21 NCAC 32Q .0101 - Definitions
Agency Revised Rule

RRC Objection 05/19/94
Obj. Removed 05/19/94

21 NCAC 32Q .0208 - Confidentiality
Rule Withdrawn by Agency

05/19/94

Board of Nursing

21 NCAC 36 .0211 - Examination
Agency Revised Rule

RRC Objection 06/16/94
Obj. Removed 06/16/94

21 NCAC 36 .0218 - Licensure Without Examination (By Endorsement)
Agency Revised Rule

RRC Objection 06/16/94
Obj. Removed 06/16/94

Professional Counselors

21 NCAC 53 .0103 - Purpose of Organization
Agency Repealed Rule

RRC Objection 06/16/94
Obj. Removed 06/16/94

21 NCAC 53 .0104 - Organization of the Board
Agency Repealed Rule

RRC Objection 06/16/94
Obj. Removed 06/16/94

RRC OBJECTIONS

21 NCAC 53 .0201 - Supervision	RRC Objection	06/16/94
Agency Repealed Rule	Obj. Removed	06/16/94
21 NCAC 53 .0303 - Work Experiences	RRC Objection	06/16/94
Agency Repealed Rule	Obj. Removed	06/16/94
21 NCAC 53 .0305 - Exemption from Academic Qualification		
Rule Withdrawn by Agency		06/16/94
21 NCAC 53 .0503 - Renewal Fee	RRC Objection	06/16/94
Agency Revised Rule	Obj. Removed	06/16/94

Real Estate Commission

21 NCAC 58A .1711 - Continuing Education Required of Nonresident Licensees	RRC Objection	05/19/94
Agency Revised Rule	Obj. Removed	05/19/94
21 NCAC 58C .0104 - Scope: Duration and Renewal of Approval	RRC Objection	05/19/94
Agency Revised Rule	Obj. Removed	05/19/94
21 NCAC 58C .0105 - Withdrawal or Denial of Approval	RRC Objection	05/19/94
Agency Revised Rule	Obj. Removed	05/19/94
21 NCAC 58C .0218 - Licensing Exam Confidentiality: School Perform./Lic	RRC Objection	05/19/94
Agency Revised Rule	Obj. Removed	05/19/94
21 NCAC 58C .0309 - Certification of Course Completion	RRC Objection	05/19/94
Agency Revised Rule	Obj. Removed	05/19/94
21 NCAC 58E .0102 - Update Course Component	RRC Objection	05/19/94
Agency Revised Rule	Obj. Removed	05/19/94
21 NCAC 58E .0104 - Criteria for Approval of Update Course Sponsor	RRC Objection	05/19/94
Agency Revised Rule	Obj. Removed	05/19/94
21 NCAC 58E .0203 - Application and Criteria for Original Approval	RRC Objection	05/19/94
Agency Revised Rule	Obj. Removed	05/19/94
21 NCAC 58E .0206 - Request for Videotape	RRC Objection	05/19/94
Agency Revised Rule	Obj. Removed	05/19/94
21 NCAC 58E .0304 - Criteria for Elective Course Approval	RRC Objection	05/19/94
Agency Revised Rule	Obj. Removed	05/19/94
21 NCAC 58E .0306 - Elective Course Instructors	RRC Objection	05/19/94
Agency Revised Rule	Obj. Removed	05/19/94
21 NCAC 58E .0308 - Request for Videotape	RRC Objection	05/19/94
Agency Revised Rule	Obj. Removed	05/19/94
21 NCAC 58E .0402 - Sponsor Eligibility	RRC Objection	05/19/94
Agency Revised Rule	Obj. Removed	05/19/94
21 NCAC 58E .0406 - Course Rosters, Completion Certificated and Evaluations	RRC Objection	05/19/94
Agency Revised Rule	Obj. Removed	05/19/94
21 NCAC 58E .0510 - Monitoring Attendance	RRC Objection	05/19/94
Agency Revised Rule	Obj. Removed	05/19/94

PUBLIC EDUCATION

Elementary and Secondary Education

6 NCAC 6C .0307 - Certificate Renewal	RRC Objection	04/21/94
Agency Revised Rule	RRC Objection	04/21/94
Agency Revised Rule	Obj. Removed	05/19/94
6 NCAC 6E .0202 - Interscholastic Athletics	RRC Objection	04/21/94
Agency Revised Rule	Obj. Removed	05/19/94

REVENUE

Sales and Use Tax

RRC OBJECTIONS

17 NCAC 7B .2608 - Plumbing: Heating: Air Cond/Elec Contractors: Purchases	RRC Objection	05/19/94
Rule Returned to Agency		06/16/94
17 NCAC 7B .2609 - Plumbing: Heating: Air Cond/Elec Contractors: Sales	RRC Objection	05/19/94
Rule Returned to Agency		06/16/94
17 NCAC 7B .5462 - White Goods Disposal Tax Report Form: E-500W	RRC Objection	05/19/94
Rule Returned to Agency		06/16/94
17 NCAC 7B .5464 - Ice Certificate Form: E-599Y	RRC Objection	05/19/94
Rule Returned to Agency		06/16/94

STATE PERSONNEL

Office of State Personnel

25 NCAC 1D .2401 - Career Growth Recognition Award		
Rule Withdrawn by Agency		05/19/94
25 NCAC 1D .2403 - Employees Eligible/Career Growth Recognition Award	RRC Objection	05/19/94
Agency Revised Rule	Obj. Removed	05/19/94
25 NCAC 1D .2408 - Effective Date of Cost-of-Living Adjustment	RRC Objection	05/19/94
Agency Revised Rule	Obj. Removed	05/19/94
25 NCAC 1D .2411 - Employees Eligible For Performance Bonus	RRC Objection	05/19/94
Agency Revised Rule	Obj. Removed	05/19/94

TRANSPORTATION

Division of Motor Vehicles

19A NCAC 31 .0307 - Courses of Instruction	RRC Objection	06/16/94
Agency Revised Rule	Obj. Removed	06/16/94
19A NCAC 31 .0501 - Requirements		
Rule Withdrawn by Agency		06/16/94

This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 733-2698.

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
ADMINISTRATION				
<i>North Carolina Council for Women</i>				
Family Violence Prevention Services v. N.C. Council for Women	94 DOA 0242	West	04/13/94	
ALCOHOLIC BEVERAGE CONTROL COMMISSION				
Alcoholic Beverage Control Comm. v. Entertainment Group, Inc.	93 ABC 0719	Gray	03/02/94	
Rayvon Stewart v. Alcoholic Beverage Control Commission	93 ABC 0793	Nesnow	04/11/94	
Alcoholic Beverage Control Comm. v. Branchland, Inc.	93 ABC 0892	Morgan	06/03/94	
Alcoholic Beverage Control Comm. v. Peggy Sutton Walters	93 ABC 0906	Mann	03/18/94	
Russell Bernard Speller d/b/a Cat's Disco v. Alcoholic Bev Ctl Comm.	93 ABC 0937	Morrison	03/07/94	
Alcoholic Beverage Control Comm. v. Branchland, Inc.	93 ABC 0993	Morgan	06/03/94	
Edward Ogunjobi, Club Piccadilli v. Alcoholic Beverage Control Comm.	93 ABC 1024	West	03/03/94	
Robert Kovalaske, Nick Pikoulas, Joseph Marshburn, Evangelos Pikoulas, d/b/a Our Mom's BBQ v. Alcoholic Beverage Control Commission	93 ABC 1029	Gray	03/04/94	
Christine George Williams v. Alcoholic Beverage Control Comm.	93 ABC 1057	Becton	04/21/94	
Alcoholic Beverage Control Comm. v. Raleigh Limits, Inc.	93 ABC 1485	Mann	03/11/94	
Alcoholic Beverage Control Comm. v. COLAP Enterprises, Inc.	94 ABC 0060	Nesnow	06/07/94	
Alcoholic Beverage Control Comm. v. Ms. Lucy Jarrell Powell	94 ABC 0070	Morgan	06/06/94	
Mr. & Mrs. Josh Bullock Jr. v. Alcoholic Beverage Control Comm.	94 ABC 0124	Morgan	06/06/94	
Jerome Crawford v. Alcoholic Beverage Control Commission	94 ABC 0125	Morgan	06/06/94	
COMMERCE				
<i>Savings Institutions Division</i>				
James B. Byers, et al v. Savings Institutions	93 COM 1622	Chess	03/01/94	
CORRECTION				
<i>Division of Prisons</i>				
Gene Strader v. Department of Correction	94 DOC 0252	Morrison	03/21/94	
CRIME CONTROL AND PUBLIC SAFETY				
<i>Crime Victims Compensation Commission</i>				
James Hugh Baynes v. Crime Victims Compensation Commission	93 CPS 0801	West	03/28/94	9:2 NCR 114
Ross T. Bond v. Victims Compensation Commission	93 CPS 1104	West	04/21/94	
James A. Canady v. Crime Victims Compensation Commission	93 CPS 1108	Gray	03/28/94	
Virginia Roof v. Department of Crime Control & Public Safety	93 CPS 1347	Nesnow	03/24/94	
Karen C. Tilghman v. Crime Victims Compensation Commission	93 CPS 1608	Reilly	05/17/94	9:6 NCR 407
Rosemary Taylor v. Crime Victims Compensation Commission	93 CPS 1626	Nesnow	05/25/94	
Violet E. Kline v. Crime Victims Compensation Commission	93 CPS 1670	Morgan	06/13/94	
James Benton v. Crime Victims Compensation Commission	94 CPS 0034	Chess	06/14/94	
Percy Clark v. Crime Victims Compensation Commission	94 CPS 0127	Reilly	04/19/94	
Richard Spencer v. Crime Victims Compensation Commission	94 CPS 0157	Chess	06/14/94	
Barbara Henderson v. Crime Victims Compensation Commission	94 CPS 0259	Morrison	04/07/94	
Shirley Handsome v. Crime Victims Compensation Commission	94 CPS 0286	Gray	04/28/94	
Georgeann Young v. Crime Victims Compensation Commission	94 CPS 0292	Reilly	04/18/94	
Lawrence L. Tyson v. Crime Victims Compensation Commission	94 CPS 0368	Gray	04/26/94	
Lyman L. Chapman v. Crime Victims Compensation Commission	94 CPS 0415	Chess	06/02/94	
Douglas and Virginia Wilson v. Crime Victims Compensation Comm.	94 CPS 0417	Reilly	06/07/94	

CONTESTED CASE DECISIONS

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
Michelle L. Wilcox v. Crime Victims Compensation Commission	94 CPS 0467	Reilly	06/07/94	
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* Consolidated Cases.

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STATE OF NORTH CAROLINA
COUNTY OF FORSYTH

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
93 EHR 1781

THE TOWN OF KERNERSVILLE)
(LQS 93-053))
Petitioner,)
v.)
NORTH CAROLINA DEPARTMENT OF)
ENVIRONMENT, HEALTH, AND NATURAL)
RESOURCES, DIVISION OF LAND RESOURCES)
Respondent.)

RECOMMENDED DECISION

This matter was heard in High Point, North Carolina on May 23, 1994, by Administrative Law Judge Sammie Chess, Jr. The Petitioner filed a petition for a Contested Case Hearing on December 23, 1993.

APPEARANCES

For Petitioner: John G. Wolfe, III
WOLFE & COLLINS, P.A.
101 South Main Street
Kernersville, NC 27284

For Respondent: Elizabeth Rouse Mosley
Assistant Attorney General
N.C. Department of Justice
P.O. Box 629
Raleigh, NC 27602-0629

ISSUES

Should a civil penalty be assessed against the Town of Kernersville pursuant to N.C.G.S. 113A-64(a)?

Based upon careful consideration of the testimony and evidence presented at the hearing and the documents and exhibits received into evidence, the undersigned makes the following:

FINDINGS OF FACT

1. That the Town of Kernersville commenced construction of a roadway project known as Industrial Park Drive (hereinafter referred to as "IPD") during the month of July, 1992.
2. That prior to the commencement of the aforementioned construction, the Town of Kernersville submitted an Erosion Control plan to the North Carolina Department of Environment, Health, and Natural Resources, Division of Land Resources, Land Quality Section (hereinafter referred to as "DEHNR") for review. That said plan was approved by the DEHNR on June 26, 1992 with one Performance Reservation.
3. That during the construction of the IPD project by the Town of Kernersville, private development by Summer Paper Tube Company occurred on adjoining property.

4. That the development by Summer Paper Company was a land disturbing activity encompassing approximately 15 acres, and which development included the stripping of virtually all of the vegetation from the said 15 acre site of Summer Paper Tube Company.

5. That during the month of November 1992, erosion of soil occurred on the Summer Paper Tube site in sufficient quantity to cause a great quantity of sedimentation to leave the Summer Paper Tube site and cross the Town of Kernersville IPD site, covering the portions of the same 50-75 feet in width and several inches in depth. That further, the erosion of such soil was of a magnitude so as to cause at least two traffic accidents on the newly constructed IPD. That the sedimentation which crossed the Town of Kernersville IPD project site, also left the Town of Kernersville site and proceeded toward and entered the tributary of the Deep River which was adjacent to both the Summer Paper Tube and Town of Kernersville construction sites. That the town of Kernersville street crew cleared and cleaned the IPD site of the sedimentation which had eroded from the Summer Paper Tube site.

6. That, again, approximately two or three months later, there was erosion upon the Summer Paper Tube site which caused sedimentation to leave that site, cross the Town of Kernersville site and proceed as the same had occurred in November 1992. That again, the Town of Kernersville street crew cleared and cleaned the IPD site of the sedimentation which had eroded from the Summer Paper Tube site.

7. That the NCDEHNR, through its employee Gray Hauser, first examined the Town of Kernersville IPD site on May 4, 1993.

8. That an inspection report was filed on May 4, 1993, finding the Town of Kernersville site not to be in compliance with the S.P.C.A. Rules of DEHNR; that corrective actions to be taken by the Town of Kernersville were noted upon said Inspections Report; that a Notice of Violation of the Sedimentation Pollution Control Act was forwarded to the Town of Kernersville on May 5, 1993 and received by the Town of Kernersville on Friday May 7, 1993. That the Town of Kernersville was informed in the Notice of Violation that if the violations were corrected within the time specified for compliance that no further legal action would be pursued. That the Town of Kernersville contacted its contractor for the project, Sherrill Paving Company, on the following Monday, May 10, 1993, and instructed said contractor to undertake all corrective actions to comply with the prior Inspections Report of May 4, 1993.

9. That the contractor, Sherrill Paving Company, notified Gray Hauser of DEHNR, on or about May 21, 1993, that the necessary work to comply with the Corrective Actions Needed, as noted on the May 4, 1993 Inspections Report, had been completed.

10. That on May 28, 1993 Gray Hauser inspected the IPD site and filed an Inspections Report; that while the Inspections Report filed as of said date recited numerous Corrective Actions Needed, the original Corrective Actions Needed as cited May 4, 1993, and noted in the Notice of Violation of the Sedimentation Pollution Control Act previously forwarded to the Town of Kernersville, had in fact either been previously complied with, or substantially complied with, by the Town of Kernersville.

11. That during the course of inspections by DEHNR, from May 4, 1993 to August 18, 1993, the Town of Kernersville acted in good faith in attempting to comply with all alleged violations of the Sedimentation Pollution Control Act, whether cited on May 4, 1993 or on subsequent dates of inspection.

12. That the Town of Kernersville, throughout the process of Inspections from May 4, 1993 to August 18, 1993, and despite heavy rains from time to time, acted in good faith and attempted to deal with all noted violations and/or corrective actions and/or all reasonable requests of DEHNR.

13. That during the course of inspections by DEHNR, and sedimentation which eroded, due to the construction of the IPD site by the Town of Kernersville, was slight in nature, particularly in contrast and comparison with the sedimentation which eroded from the aforementioned Summer Paper Tube site. That there was no calculation of eroded sedimentation which left the Town of Kernersville site presented by DEHNR.

14. That the May 28, 1993 DEHNR Inspections Report included additional findings and Corrective Actions Needed which were over and above those cited on May 4, 1993, as did subsequent Inspection Reports of June 15, 1993, June 25, 1993, and August 18, 1993. That the Notice of Continuing Violations of the Sedimentation Pollution Control Act forwarded to the Town of Kernersville on June 17, 1993 by DEHNR, recited the failure to comply with the May 4, 1993 Inspections report, which the Court finds as having been complied with, or substantially complied with.

15. That the Summer Paper Tube land disturbing activity was under the jurisdiction of another enforcement agency and being inspected by the same, to wit: the Winston-Salem/Forsyth County Inspections Department; that the Town of Kernersville cannot be held liable or responsible for the sedimentation which escaped the Summer Paper Tube Company property and crossed the Town of Kernersville IPD construction site.

16. That the findings of fact by the DEHNR, in Assessing Civil Penalties in this matter, by use of the Guidelines for Assessing Civil Penalties, only mirrored the findings of the earlier Notice (to the Town of Kernersville) of Violation of the Sedimentation Pollution Control Act, without any further independent study or findings; that the Civil Penalty Assessment for SPCA Violations was calculated by the Director of DEHNR in direct reliance upon facts and information provided the Director from staff of DEHNR, and without any further independent study or findings. That a portion of such findings and calculations were unfounded and arbitrary in nature.

17. That the Town of Kernersville, having been notified of specific violations of the Sedimentation Pollution Control Act, and having been specifically given an opportunity to correct such noted violations by DEHNR, and having been informed that the correction of such violations would result in no further legal action being taken by DEHNR, and the Town of Kernersville having acted in good faith in correcting, or substantially correcting, all such noted violations, should not be subject to Civil Penalties in this matter.

Based on the foregoing Findings of Fact, the undersigned makes the following:

CONCLUSIONS OF LAW

1. The purpose of the Sedimentation Pollution Control Act is for the protection of the natural resources, and adjoining properties by the DEHNR. G.S. 113A-2.

2. It is the responsibility of each person conducting land disturbing activity, governed by the Sedimentation Pollution Control Act, to comply with the Act and with the Rules and Regulations properly promulgated for its enforcement. G.S. 113A-57(3).

3. A person is entitled to Due Process, both constitutionally and under the Sedimentation Pollution Control Act, which includes proper notification of violation(s) of the Act and the opportunity to comply with said Act. G.S. 113A-64(a)(1)(2)(3), and (b).

4. It is the responsibility of the DEHNR to properly notify a person of Violation(s) of the Sedimentation Pollution Control Act, and to give that person the reasonable opportunity to comply with the Act. That proper notification includes the setting forth of all violations and the actions necessary for compliance with the Act.

5. Civil penalties, provided for under the Sedimentation Pollution Control Act, are to be founded upon fact and not arbitrary in nature. G.S. 113A-64.

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned makes the following:

RECOMMENDED DECISION

It is recommended that no civil penalties be assessed against Petitioner, the Town of Kernersville, (LQS 93-053), by the Respondent.

ORDER

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, N.C. 27611-7447, in accordance with North Carolina General Statute 150B-36(b).

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this recommended decision and to present written arguments to those in the agency who will make the final decision. G.S. 150B-36(a).

The agency is required by G.S. 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings.

The agency that will make the final decision in this contested case is the North Carolina Department of Environment, Health, and Natural Resources.

This the 29th day of June, 1994.

Sammie Chess, Jr.
Administrative Law Judge

The North Carolina Administrative Code (NCAC) has four major subdivisions of rules. Two of these, titles and chapters, are mandatory. The major subdivision of the NCAC is the title. Each major department in the North Carolina executive branch of government has been assigned a title number. Titles are further broken down into chapters which shall be numerical in order. The other two, subchapters and sections are optional subdivisions to be used by agencies when appropriate.

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5	Correction	Certified Public Accountant Examiners	8
6	Council of State	Chiropractic Examiners	10
7	Cultural Resources	General Contractors	12
8	Elections	Cosmetic Art Examiners	14
9	Governor	Dental Examiners	16
10	Human Resources	Dietetics/Nutrition	17
11	Insurance	Electrical Contractors	18
12	Justice	Electrolysis	19
13	Labor	Foresters	20
14A	Crime Control & Public Safety	Geologists	21
15A	Environment, Health, and Natural Resources	Hearing Aid Dealers and Fitters	22
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